PROPOSED DISOLUTION OF BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

SPECIAL HEARING

Congressional Witnesses

Department of the Treasury

Nondepartmental Witnesses

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PROPOSED DISSOLUTION OF BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

MONDAY, FEBRUARY 22, 1982

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL
SERVICE, AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. James Abdnor (chairman) presiding.

Present: Senators Abdnor, Mattingly, and Proxmire; also present: Senator Cannon.

NONDEPARTMENTAL WITNESSES

OPENING STATEMENT OF SENATOR ABDNOR

HEARING PROCEDURE

Senator **ABDNOR**. The subcommittee will now come to order. Good morning, ladies and gentlemen.

This hearing has been provided for by public law. The legislative purpose of the hearing is to determine whether or not the Appropriations Committees of the Congress should provide funds for the dissolution of the Bureau of Alcohol, Tobacco and Firearms (BATF).

The abolishing of the BATF and transference of its functions to the U.S. Customs Service and the U.S. Secret Service has become a very controversial issue that may have a severe and untold impact on numerous industries, organizations, and individuals across the land.

It is the committee's intention to hear witnesses from all sides of this issue and make the most fair and equitable decision possible on how appropriated funds will be expended.

Today we have over 20 witnesses from whom we must hear testimony. I am requesting that all witnesses be brief, but, on the other hand, give the subcommittee their honest opinion on whether or not the BATF should be abolished. I can assure each and every witness that his full written and prepared statement will be included in our record and that the transcript of this hearing will in due course be printed and available to the general public.

Finally, I want to make one point clear. It has been the subcommittee's position that everyone who requested permission to testify should be accommodated. That decision has been followed to the letter, except with respect to the alcoholic beverage industry and the State officials concerned with that socially sensitive issue. With respect to the beverage industry and to facilitate each division thereof, the subcommittee adopted a panel approach. In other words, on the beverage panel are representatives of each segment of the industry as well as representatives of State law enforcement and regulatory commissions.

Once again let me state that to the best of my knowledge, every witness who wished to testify was accommodated.

That was the only statement I intended to make at the start of these hearings. Unfortunately, last Thursday and Friday events took place which changed the nature of these hearings.

Heretofore the issue before this subcommittee was whether or not to appropriate funds to effectuate dissolving the Bureau of Alcohol, Tobacco and Firearms. Today the issue is whether or not this subcommittee can hold hearings without the witnesses before the committee being contacted by officials of the Department of the Treasury.

To be specific, late last Thursday afternoon our staff lawyer released to the Treasury a list of witnesses who were to appear before our committee. This was done at the request of Treasury and in a spirit of friendly cooperation between the U.S. Senate Appropriations Committee and the Department of the Treasury. In his defense, our staff attorney warned the Treasury officials involved that this witness list was a Senate document and should be handled with sensitivity. Now, that was Thursday afternoon.

I am advised that on Friday officials of the Treasury Department began to telephone individuals on our witness list. What the purpose of those telephone calls was I do not know.

Now, on behalf of this subcommittee, I want to sincerely apologize to any witness who was contacted by the Treasury Department. It is inconceivable that Government officials who grant permits for businessmen to conduct their occupations should seek to contact those businessmen before they testify before a committee of the U.S. Senate.

Tomorrow the subcommittee is scheduled to hear testimony from the Deputy Secretary of the Treasury and an Assistant Secretary of the Treasury. Let me assure you I intend to pursue this matter.

Now, with that apology to our witnesses and public acknowledgement of the position this subcommittee is now in, let us commence.

INTRODUCTION OF WITNESSES

Our first witnesses this morning are a part of a panel comprised of State officials of various alcoholic beverage commissions: Ed Soderman, who is the immediate past president of the National Conference of State Liquor Administrators; Charles Nuzum, director, division of alcohol and tobacco from Tallahassee, Fla; Michael McKinney, executive assistant of the Texas Alcoholic Beverage Commission; and Terrence R. Flynn, commissioner, division of beverage control, State of New York.

Gentlemen, I would like to ask you to come forward, if you would, please. We said in our opening remarks we appreciate brevity. We don't want you to omit any important parts of your statement. Let me once again assure you that your entire statements will be made part of the record.

I don't know which one of the four of you would like to start out. Proceed as you wish.

PANEL OF ALCOHOLIC BEVERAGE COMMISSIONS AND STATE OFFICIALS
NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS

STATEMENT OF CHARLES NUZUM, VICE PRESIDENT, NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS AND DIRECTOR DIVISION OF ALCOHOL AND TOBACCO, DEPARTMENT OF BUSINESS REGULATIONS, STATE OF FLORIDA

RESPONSIBILITIES OF ATF

Mr. NUZUM. Thank you, Mr. Chairman. My name is Charles Nuzum. I am the vice president of the National Conference of State Liquor Administrators and director of the division of alcohol and tobacco, department of business regulations, State of Florida.

I certainly am honored by this opportunity to testify before the committee. I and my colleagues will be brief.

We are concerned about the move to disband the Bureau of Alcohol, Tobacco and Firearms and transfer its functions to other agencies. The ATF has been a partner with our agency in Florida in the enforcement efforts and regulation of the laws governing these industries for the best interests and welfare of our citizens and of the Nation.

The Bureau has many responsibilities under the Federal Alcohol Administration Act and the Internal Revenue Code for the regulation of the alcohol industry on a nationwide basis. Over the years, the ATF has also worked very closely with all of the various State alcohol control agencies, both in providing assistance to and supplementing the State programs.

EXCESSIVE BURDEN ON STATES FROM ATF ABOLISHMENT

In the event the ATF is abolished and disbanded, it appears that the responsibility for many of its regulatory programs would evolve to the States. The administrators of the State control agencies are understandably concerned over the sudden imposition of this burden without in most cases the financial and personnel resources necessary to carry out an effective regulatory program.

We appreciate the help of BATF. We encourage Congress to fund it at a level where it can continue to provide that help. Frankly, when you consider the Federal Government obtains some $5.7 billion from the legal alcoholic beverage industry and another $2.6 billion from cigarette taxation, why, funding of BATF to enforce the FAA Act and the Contraband Cigarette Act is a real bargain.

With the demise of ATF, the State agencies would also be without the opportunity to consult with the Bureau for needed expertise and guidance which has been provided when requested. ATF's cooperation in this regard has fostered a partnership between Federal and State authorities which has resulted in efficient regulation of the alcohol industry throughout the Nation and in each individual State.

My colleagues and I find it difficult to conceive how without ATF and its current programs and the assistance it provides to the States in the area of regulatory compliance, how that can be maintained at its present high level. We feel the present joint regulatory effort between Federal and State authorities provides the most effective means of insuring adequate protection to the consumer against fraudulent practices and preventing unfair trade practices and unlawful competition, which would lead to domination of the industry by the largest and most powerful members, and of assuring the considerable Federal and State revenues generated by this industry are paid in the full amount of their liabilities.

Senators, we are dealing with a sensitive product which causes great moral concern to many of our citizens. The repeal of prohibition by the States was achieved in important part with the understanding that the Federal Government would, of necessity, provide a strong and viable Federal presence to serve as a perimeter of defense to the recurrence of evils which brought about national prohibition in the first place. That is the tide house, the exclusive outlet, and the other services provided to or by manufacturers, wholesalers, and retailers, which ultimately work to the detriment of the consumer and have an absolute effect on the availability of products and the price that the consumer must pay for the products that are available.

Yes, the 21st amendment to the U.S. Constitution preserves to the States control over beverage alcohol in their States. But we definitely can't continue to exercise needed regulation without Federal assistance from a strong, knowledgeable Federal agency. We shouldn't try to reinvent the wheel on this matter.

CONCERNS WITH STATE CONTROL OF RESPONSIBILITIES

My colleagues and I have reviewed ATF's regulatory programs administered under the provisions of the Internal Revenue Code and the FAA Act and related laws and we have attempted to assess the impact of the sudden imposition of these responsibilities upon State alcohol control agencies in the event ATF is in fact dismantled. My colleagues and I will try to briefly detail some of our concerns which involve areas that States cannot effectively cope with.

First, in the area of foreign trade. Under the provisions of the FAA Act and related laws and regulations, ATF has a significant role in dealing with other Government bodies and corresponding representatives of foreign governments concerning both foreign alcoholic beverage products imported into the United States and domestic products exported to other countries.

Distilled spirits, wine and malt beverages comprise a significant portion of foreign and domestic products traded in international markets. Many of our trade partners regulate the alcoholic beverage industry in their respective countries with a philosophy that differs dramatically from our own.

BATF has developed a reputation for efficiency and evenhandedness in dealing with them to resolve fundamental and recurring disputes concerning questions such as labeling of wines and agreed upon standards of identity for products.

REDUCTIONS IN NONTARIFF TRADE BARRIERS

For example, over the past decade, negotiations have been ongoing between the U.S. intergovernmental delegation and members of the European Economic Community concerning reductions in nontariff trade barriers which in the past have prevented entry of domestic wines into EEC member countries. ATF officials have been the leaders of this delegation from the United States since the ATF is widely regarded as having the foremost technical expertise on alcoholic beverage production and labeling.

ATF also certifies U.S. alcoholic beverages as to the standard of fill, labeling information, and production requirements.

State alcohol control agencies have had little experience in dealing with representatives of foreign governments and would find it difficult to match the accomplishments achieved by ATF. By virtue of its unique position as a centralized authority, ATF is able to deal with counterpart representatives of foreign governments on an equal level to quickly and effectively resolve international issues. To fragment this responsibility among the various State agencies would negate many of the advantages and benefits which have been achieved for the U.S. industry.

At this time I would like to introduce my colleague, Mr. Ed Soderman from Arizona.

JOINT COMMITTEE OF THE STATES

STATEMENT OF ED SODERMAN, IMMEDIATE PAST PRESIDENT, NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS AND ASSISTANT SUPERINTENDENT, DEPARTMENT OF LIQUOR, LICENSES AND CONTROL, STATE OF ARIZONA

Mr. **SODERMAN**. My name is Ed Soderman. I am immediate past president——

Senator **ABDNOR**. Let me stop you just a minute. The minority ranking member, as you know, is Senator DeConcini. He very much wanted to be here but he couldn't at this time. But he asked me to say how pleased he was that you will be testifying. He told us about your coming in and was very much waiting for you to be here. He knew you would make a great contribution. However, the Senator did have previous commitments in Arizona that have prevented his being here today. Senator DeConcini and, for that matter, all of us want to welcome you and say we are looking forward to hearing your testimony. I will place this in the record.

Mr. **SODERMAN**. Thank you, Mr. Chairman. I don't blame Senator DeConcini for being in Arizona today. It was 84° yesterday and the Sun was shining. [Laughter.]

My name is Ed Soderman. I am the immediate past president of the National Conference of State Liquor Administrators and the assistant superintendent of the Department of Liquor, Licenses and Control for the State of Arizona. I am also representing the chairman of the Joint Committee of the States. I appreciate the opportunity to express the Committee of the States' concerns as they relate to the proposed disbanding of the Bureau of Alcohol, Tobacco and Firearms and the transfer of certain functions of that agency.

I would like to invite your attention to a resolution adopted by the Joint Committee of the States at their San Antonio meeting on

November 16, 1981, and forwarded to this committee which addresses the issue being expressed here today.

CONSUMER PROTECTION

The area of consumer protection is one of the primary concerns of State liquor administrators throughout this country. BATF administers an active consumer protection program under the provisions of the FAA Act. This act establishes national standards for labeling and advertising which is designed to prohibit false, deceptive, obscene, and erroneous information being disseminated to the buying public. These regulations establish clearly the standard of identity of domestic and imported alcoholic beverage products which must be met before it reaches the consumer. With these national standards, the consumer can rely on the quality and content indicated on the label.

The proposed dissolution of these important BATF programs would leave the responsibility in this area entirely to the States. The elimination of this single function of an established Federal program would require 50 new programs to be developed at the State level, which would be burdensome and inefficient. In addition to being inefficient, it would be next to impossible for States to administratively insure product integrity and truthful labeling and advertising because of the extensive interstate and foreign commerce movement of these products.

BATF INSPECTION PROGRAMS

The product integrity that BATF provides by onsite inspections, laboratory testing, record audits, and regulatory guidance has assured the American public that both imported and domestic alcoholic beverages they purchase contain what the label claims. This assurance is assumed without question by the public that the products they purchase are not contaminated by foreign or harmful substances and are similar to other products so labeled.

The Bureau's laboratories provide some of the most sophisticated equipment and experienced personnel for testing alcoholic beverages that is available anywhere. The BATF field personnel routinely collect samples of domestic and imported products and test them for foreign and toxic substances, alcoholic content, container fill, and ingredient usage.

Finally, there are the federally regulated standards of identity that distinguish a blended whiskey from a scotch or bourbon, and these standards state minimums for producers to meet before they can grant a verification-of-age statement.

If these enforcement programs are dismantled or severely curtailed, it will be nearly impossible for the States to institute programs to replace the Bureau's product-integrity services.

The majority of alcoholic beverages sold in any State are not produced within its borders. Again, it would be next to impossible for a State to attempt to insure the products manufactured in another State are in compliance with the laws and regulations. States have no authority to make out-of-State onsite inspections and would have to accept a producer's representations and establish a consistent and questionably efficient duplication of testing procedures.

It is without question that the quality of consumer products would vary greatly from State to State. It is difficult to conceive any system of consumer protection being developed that would be more efficient than those presently being conducted by BATF. The establishment of 50 differing variations of product standards of identity would pose enormous problems for foreign and domestic producers who distribute their products nationwide.

To clearly illustrate the need for strong oversight enforcement of quality control, I am going to narrate a recent incident in Arizona.

I received a notification from California that BATF had determined that a wholesaler in our State had distributed a substantial quantity of a distilled spirit which was 20 proof and was labeled 80 proof. This product came from a supplier to a wholesaler to a major multiple outlet grocery retailer in Arizona. It had also been distributed into Texas. BATF received a complaint, and this is rather amusing, from a discriminating consumer who found that his vodka had frozen. [Laughter.] BATF was able to immediately identify the supplier, identify the shipment to the wholesaler, and further identify the retailer, the retailer handling the product, and got the product off the market within a couple of days. There is no way that my department could have accomplished the results that BATF did in this instance.

COMMON APPLICATION FORMS

I would like to briefly address another area of current BATF responsibility and relate it to my current experience. During the past 3 years that Mr. Robinson has been a member of the Joint Committee of States they have worked extensively on common forms, uniformity of positions on law enforcement, and regulations and proposed joint Federal-State application forms for suppliers, wholesalers, and importers.

The first agency contacted by the licensee, the supplier, or the wholesaler is BATF which issues the basic Federal permit for operation. Before the permit is issued, an extensive investigation is conducted to determine whether the applicant has met the requirements of both Federal and State laws and is eligible for a permit to operate. Complete verifications and analyses are made of financial information to identify any hidden ownerships and to ascertain the legitimacy and viability of the proposed business. All States presently have permit requirements for those who wish to operate a business in the alcohol industry. Last year Arizona established requirements to license out-of-State suppliers. The background investigation could have been a staggering responsibility for this State to undertake. Understanding the thoroughness of the BATF background investigations enabled us to license the out-of-State suppliers who held Federal permits without expending resources from this department.

OPERATION OF GASOHOL UNITS

Another matter of vital concern to the States relates to permittees operating gasohol units throughout the United States, particularly the Southwest area of the United States. BATF in a recent bulletin indicated that, as a result of an investigation by BATF, an operator of a gasohol unit was sentenced to 5 years in prison for selling alcohol produced in that unit for human consumption. The individual States again would have a great deal of difficulty in enforcing the alcohol program, and extensive resources would be necessary in State law enforcement programs to do so.

Again, I appreciate the opportunity to appear before you and I thank you very much.

Senator ABDNOR. Thank you, Mr. Soderman. I am sure I can speak for the Chamber of Commerce of Arizona when I say that vodka didn't freeze in Arizona.

Mr. SODERMAN. It is not easy to freeze vodka in Arizona. [Laughter.]

I would like to introduce Mike McKinney from the State of Texas.

TEXAS ALCOHOLIC BEVERAGE COMMISSION

STATEMENT OF MICHAEL McKINNEY, TEXAS ALCOHOLIC BEVERAGE COMMISSION

PERMITTING PROCESS

Mr. McKINNEY. Mr. Chairman, my name is Michael McKinney. I am appearing as a representative of the Texas Alcoholic Beverage Commission for Mr. Sherman MacBeth of Austin, Tex.

The Texas Alcoholic Beverage Commission is the Texas State agency that is charged by law with governing all phases of manufacturing, importation, transportation, advertising, sale, taxation, and trafficking of alcoholic beverages in Texas. In that respect, we do consider ourselves fortunate in that all phases of the regulation and tax areas are carried out in a single State agency. We do believe that we operate one of the most comprehensive programs of regulation. Mainly this is done through the permitting process.

We are not bragging, Senator, in this regard but merely giving credit to the prior Texas legislatures which have seen fit to enact a comprehensive regulatory scheme governing alcoholic beverages.

In Texas our statutes do not generally incorporate by reference. Therefore, we do not automatically adopt laws or regulations depending on the Bureau of Alcohol, Tobacco and Firearms' practices. However, I believe it is safe to say that many States do follow the practice of adopting Federal statutes and rules by reference. We do, though, in Texas follow many of the same procedures as followed by BATF, and we rely on that Bureau to a great extent in several important areas of State regulation.

FEDERAL PRESENCE NECESSARY FOR BEVERAGE CONTROL REGULATION

Senators, we don't believe it is to be our mission to lobby against congressional or administration recommendations, but we do feel we would be remiss if we did not point out the manner in which our State agency would be affected if BATF as an alcoholic beverage regulatory agency were to be severely dismantled. Let me give you a brief background as to our feelings as to the necessity for a Federal presence for beverage alcohol regulation.

The State of Texas, as you may know, is a virtual checkerboard of wet and dry areas. Since repeal of prohibition, local option elections have been held all across Texas with widely varying results. In those areas that have been voted wet over the years, we believe that the citizens who accepted alcoholic beverages into their communities did so wholly or partially on the assurance by credible persons and community leaders that strong State and Federal controls would be in place so as to protect against many of the problems which were experienced before and during prohibition.

While this statement can certainly be subject to authentication or to question, we don't believe it is too far afield because we know that in local option elections held in the past several years part of the proponents' arguments for a wet system is the fact that governmental scrutiny and oversight of the beverage alcohol market is ongoing and is viable. This is only one reason for the desirability of a Federal presence. My colleagues have discussed certain aspects and I will attempt to give our viewpoint on certain other segments of our operation which especially point out the need for a Federal regulatory authority in the area of product integrity.

BATF ONSITE INSPECTIONS

We would point out that the BATF's program of onsite inspections and regulatory guidance is responsible for helping assure the public that all imported and domestic alcoholic beverages they purchase contain what the label indicates and through a vigorous program of quality control assures the public the product does not contain any foreign or harmful substances.

If BATF enforcement and quality control programs are dismantled or severely curtailed, it will be difficult for the States to institute similar programs to replace those BATF efforts upon which many States have come to rely over the past many, many years.

In Texas, for example, our industry produces a lot of malt beverages but produces virtually no distilled spirits and a very, very insignificant amount of wine. We would ask you to consider the magnitude of the problems which would be created for the individual States if each attempted to set up quality control and testing procedures for products manufactured outside their boundaries, especially when no procedures are in place right now.

I am told that some States rely exclusively on information from the BATF to look after these tasks on their behalf. Regardless of the various systems which would be implemented in the several States which have no program in place now, it is certain to be less efficient and more expensive than present Federal oversight when viewed from the standpoint of net cost to an individual taxpayer, whether that taxpayer be in Michigan or Texas or Florida or anywhere.

EFFECT ON TEXAS FROM DISMANTLING BATF

Let me give one example, Mr. Chairman, of how the dismantling of the BATF quality control apparatus would affect the State of Texas.

In Texas we impose a 10-percent tax on the sale and service of mixed drinks. That is if a drink is sold for $2, the tavern operator owes the State of Texas 20 cents. We audit some 8,000 accounts which are required to pay the 10-percent gross receipts tax. Naturally, some operators are not as fairminded as others and seek to avoid payment of the tax by looking for ways to circumvent the very careful system we require for obtaining liquor supplies and to circumvent reporting requirements. To put it plainly, many permittees go to an unauthorized supplier, purchase liquor, and then refill the empty bottles which they have illegally retained and which bear our numbered identification stamp. This means we have virtually no way of tracing the amount of liquor sold by that permittee as a way to discover tax delinquencies. Most times we find that a cheaper brand is poured into the empty bottle.

REFILLING VIOLATIONS

When we suspect a refilling violation has occurred, and there are several ways that we use to detect this, we seize the container and subject the contents to a very thorough chemical analysis in our own laboratories. We then purchase a true sample of the product from a retailer and do a similar analysis. This data is then compared against the physical and chemical parameters reported by the BATF laboratories in their regular publications. When chemical parameters of the seized product differ, then we usually have an ironclad tax-evasion case.

Senators, the key to the tax-evasion case is the authenticated analysis file that the Bureau of Alcohol, Tobacco and Firearms furnishes. We have found it to be virtually unimpeachable in State court as a source of confirmation of the chemical data shown in the test.

We test some 50 to 60 samples each year in this manner. Most of these tests are followed by tax-evasion cases and result in the collection of either large amounts of delinquent taxes or revocation of the license. While I would not attempt to fix a dollar amount of tax recovery, it is very safe to say it is in the multiple hundreds of thousands of dollars annually.

More important, though, is the general knowledge that permittees have that the Texas Alcoholic Beverage Commission is capable of detecting such illegal refills, and it is also safe to say the deterrent factor is much more significant than the actual tax recovery factor. We have means by which to enforce this particular tax law. Our case is cemented very firmly by the use of ATF laboratory data. Third-party private labs would want to be paid. Costs for the type of data to replace the ATF authentication would be enormous.

LABELING AND ADVERTISING

With specific regard to labeling and advertising, we can say that the State of Texas depends to a great extent on the Federal law being carried out at the national level with regard to label approvals and advertising approvals by the ATF prior to importation or distribution of an alcoholic beverage. This means that problems are worked out at a Federal level and the shipper is spared the trouble and expense of dealing with multiple jurisdictions over a subject that would not pass scrutiny in many States. If an objectional statement is not on the label in the first place, then States do not have to rule on its acceptability within their own regulatory schemes.

I can certainly see, Mr. Chairman, how it is possible that many States do rely exclusively on prior Federal labeling and advertising approvals and just routinely rubberstamp the approvals when those materials have already passed Federal scrutiny. I know that many States simply do not have the resources to develop and maintain a separate operation within their own agencies to replace the Federal resources relied upon for years.

While the State of Texas is fortunate that we do not experience many of the problems that some States do experience, we nevertheless want to let you know that we recognize the difficulties of other member States of the National Conference of State Liquor Administrators and point out some of these potential problems that we ourselves will experience if the Federal presence is not maintained.

I do appreciate your indulgence and appreciate being here, Mr. Chairman.

Senator **Abdnor**. Thank you.

Mr. **McKinney**. Mr. Chairman, I would like to introduce Terrence Flynn, the commissioner of the State of New York.

NORTH REGION, NATIONAL CONFERENCE OF LIQUOR ADMINISTRATORS

STATEMENT OF TERRENCE FLYNN, COMMISSIONER, STATE OF NEW YORK

ILLEGAL INTERSTATE TRANSPORTATION

Mr. **Flynn**. Good morning, gentlemen. It is a pleasure to be here. I appreciate the opportunity to talk to you.

I do not have a prepared statement because I am here representing the chairman of the north region of the National Conference of Liquor Administrators and I am a member of the New York State Liquor Authority. I am also a member of the Joint Committee of States and have been working with Mr. Lloyd Robinson, who Mr. Soderman mentioned earlier, with regard to joint forms to be used by the different States and the ATF.

I have a story to tell about the ATF and the cooperation with relation to more product being shipped. At this particular time I cannot state what product specifically because of the fact the case is still pending in New York. But a popular Western beer was shipped out of the South to New York. The BATF, having been notified by a local police department in the State of Delaware, contacted me in New York City. I am in charge of enforcement for the State of New York. We set up a surveillance of the malt liquor coming out of Delaware through New Jersey and into the State of New York. Not only was the product not a brand-labeled, registered product, but it also had gone beyond the shelf life of the product itself.

Now, here is a prime example of the necessity of the cooperation and the incumbent responsibility of the ATF to continue in existence for the cooperation with the States. People of the State of New York, and I am sure other States are in a position where without the ATF the enforcement of the liquor laws cannot be accomplished by the States. We cannot guarantee to the people of the

United States true protection without the testing of the products—not only the products made or produced in this country but the products produced and manufactured in foreign countries.

If the ATF goes out, and I can't understand why—I understand it is not that many millions of dollars. I know that in my State we have 24,000 on-premise licensees. While one of my colleagues was speaking, I just ran off some figures, and I don't have the change, but at $54 for every on-premise licensee in the State of New York, with another 24,000-plus, that is $1,300,000 that the Federal Government collects from retail licensees in the State of New York. I am not talking about the wholesalers or suppliers, what have you, but this is $54 from the retail licensees. And what service should we receive? Not the licensee, but the people of the State of New York, the State of Oregon, closed States, open States. Every person in the United States is entitled to protection.

We all know there is a great trend lately to popularize and we hope some day they will find a cure for cancer. What effect does any of these deleterious substances in any of our alcoholic products, whether it be manufactured in the United States or otherwise, have upon our bodies? No one seems to know. Some people say wine is good for you. Other people say wine is not good for you. Some people say liquor is good for you. Some people say it is not. Some people say malt alcohol is good for you. Some people say it is not. That is up to the individual whether they like to drink it or not.

ADULTERATION PROCESS TESTING

But we must look to the point that when people adulterated—as Mike McKinney was talking about, in the State of Texas, the ATF, by way of the Government decision, stepped out of the adulteration process testing. It is impossible for any one State to be able to follow through without an enormous investment in laboratories just for the adulteration process testing. We are at the rate of 1,000 bottles a year, toward 2,000, attempting to be tested. Now, this was a service that was being done or an obligation that was being done because of a Federal violation of the adulteration by the BATF, which they stepped out of in 1977.

If we go to the product safety, the States cannot handle it, and it should not be their responsibility to handle it. It is the responsibility of the Federal Government.

We are not merely talking about a $54 fee. With the excise taxes that the Government of the United States collects, they should have some responsibility back to the people of the State in which they are collected, and every other State, and from the wholesalers or the suppliers or wherever. These excise taxes should be used and they should be used to protect the people of the United States.

STATE AFFIRMATION LAWS

We have affirmation laws in our State. I cannot speak for the other States. Unless we have information, our people will not have the benefit of the lowest price of alcohol there is in the United States. There are foreign theories of procedures as far as business operations are concerned. The manner in which they operate is a lot different than we operate as far as our health approach.

Here again the ATF has the tools and the arms to do it throughout the world. We would have representatives in every country in the world, from every State, if they wanted to be protected. Can I speak for the State of Florida or Arizona or Texas or California if we in New York permit alcohol to proceed through the State of New York to their States? Are there responsible deleterious products contained therein? Or are we going to be responsible if there is no BATF to make sure the products are substantially protected and they are clear and there are no deleterious products contained therein?

You talk about removing the gasohol-type situation of permits. Well, I commented when they were putting through a law in the city of New York a year ago August, and it is coming true, that they think the Elliott Ness program was something back in the old days. I told them in New York, on the beer, because they put on a separate tax for the city of New York, bootlegging will be back, and there is no question on that. And if you are not going to have enforcement on the Federal level as to your gasohol permits and so forth, you are going to have it, and you are going to have it strong.

Questions come up. How are we going to cope if there is such an invasion into the industry of "illegal" type people? In the old days people used to use strong-arm methods. We are much more sophisticated now. I think today it is very difficult to discern who is a potential illegal operator, and I use that word for the sake of the term illegal. And without that primarily responsible approach by the ATF to keep the unwanted elements out of the industry, yes, they are here, and they will be here and they will always be here.

RESOLUTION

Gentlemen, I would only say one thing. I have to submit to you the actual resolution of the National Conference of Liquor Administrators in relation to retention of the ATF per se. I would like to submit it at this time on behalf of my colleagues.

Senator **Abdnor**. That will be included in the record.

[The information follows:]

National Conference of State Liquor Administrators

RESOLUTION

Whereas proposals have been advanced to dismember the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, drastically reduce the staffing, and reassigning its regulatory functions to other agencies of the Federal Government; and

Whereas coinciding with such dismemberment of the Bureau of Alcohol, Tobacco and Firearms is a proposal to amend the Federal Alcohol Administration Act to such an extent that many of the regulatory principles embraced by the National Conference of State Liquor Administrators will no longer be adhered to by the federal agencies ultimately charged with regulation of the various aspects of beverage alcohol traffic; and

Whereas although the 21st Amendment to the United States Constitution preserves for the individual states a strong and viable role in the control and regulation of alcoholic beverages, the National Conference of State Liquor Administrators nevertheless recognizes the necessity of a strong and viable federal presence to serve as a perimeter of defense to the recurrence of evils which brought about national prohibition in the first place, that is, the tied house, the exclusive outlet, and the other "services" provided to or by manufacturers, wholesalers, and retailers which ultimately work to the detriment of the consumer and have an absolute effect on the availability of products and the prices the consumer must pay for the products that are available; and

Whereas it is recognized that the occurrence of either one or both federal proposals, that is, the revision of the Federal Alcohol Administration Act or the dismemberment of the Bureau of Alcohol, Tobacco and Firearms, could be disastrous in terms of the "spinoff" issues and problems which would be faced by the individual states: now, therefore, be it

Resolved, That the Executive Committee of the National Conference of State Liquor Administrators meeting in Scottsdale, Arizona, on November 13, 1981:

1. Oppose any plan to dismember the activities, reduce the funding, reassign the responsibilities, or in any way lessen or alter the ability of the Bureau of Alcohol, Tobacco and Firearms to conduct its duties and responsibilities as currently defined and conducted; and
2. Oppose any effort to amend the Federal Alcohol Administration Act in such a manner as to alter the existing substantive law that presently provides protection against the abuses and problems which occurred early in this century and led to the institution of national prohibition, the repeal of which was brought about wholly or partially on the basis that the federal government would operate a strong program of enforcement and regulation.

Done is Scottsdale, Arizona, this the 13th day of November, 1981.

Attest:

TERRANCE D. MICEK,
Executive Secretary-Treasurer.

GENERAL STATEMENT OF NCSLA

Mr. FLYNN. Also, if you have not received a copy of the resolution of the Joint Committee of States, which we sponsored back in November 1981, we will supply that to you. All the representatives of the closed and open States went on record that the ATF shall remain intact, as such.

Thank you very much. I appreciate the opportunity you have given me to speak.

Senator ABDNOR. Thank you, Mr. Flynn.

[The information follows:]

NATIONAL CONFERENCE of STATE LIQUOR ADMINISTRATORS

Dear Senator:

The National Conference of State Liquor Administrators is an association whose purpose is to "devise and promote the enactment of the most effective and equitable types of state liquor laws, and to devise and promote the use of such methods to enforce and to make effective the particular liquor laws of each state." It is intended that our association "work for harmony between the liquor laws and administration of the federal government and the laws and administration of several states...". (Constitution of NCSLA).

As the Executive Secretary-Treasurer of the National Conference of State Liquor Administrators, I include with this letter a general statement identifying "The Impact upon State Alcohol Control Agencies of the elimination of the Bureau of Alcohol, Tobacco and Firearms". I respectfully submit the same on behalf of the National Conference of State Liquor Administrators to you.

Very truly yours,

Terrance D. Micek
Executive Secretary-Treasurer
of the NCSLA

THE IMPACT UPON STATE ALCOHOL CONTROL AGENCIES OF THE ELIMINATION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

INTRODUCTION

Recently, the Administration announced plans to disband the Bureau of Alcohol, Tobacco and Firearms (ATF) and transfer its functions to other agencies.

The Bureau has many responsibilities under the Federal Alcohol Administration Act (FAA) and the Internal Revenue Code (IRC) for the regulation of the alcohol industry on a nationwide basis. Over the years, ATF has also worked very closely with the various state alcohol control agencies, both in providing assistance to and supplementing state programs.

In the event that ATF is disbanded, it appears that the responsibility for many of its regulatory programs would evolve to the states. The administrators of state alcohol control agencies are understandably concerned over the sudden imposition of this burden without, in most cases, the financial and personnel resources necessary to carry out an effective regulatory program. With the demise of ATF, the state agencies would also be without the opportunity to consult with the Bureau for needed expertise and guidance which has been provided whenever requested. ATF's cooperation in this regard has fostered a partnership between federal and state authorities which has resulted in efficient regulation of the alcohol industry both in the nation as a whole and within each state.

The administrators of state alcohol control agencies find it difficult to conceive how, without ATF and its current programs, and the assistance it provides to the states, regulatory compliance can be maintained at its present high level. We feel that the present joint regulatory effort between federal and state authorities provides the most effective means of insuring adequate protection to the consumer against fraudulent products; of preventing unfair trade practices and unlawful competition which would lead to domination of the industry by the largest and most powerful members; and of insuring that the considerable federal and state tax revenues generated by the industry are paid in the full amount of their liabilities.

We have reviewed ATF's regulatory programs administered under the provisions of the IRC, the FAA Act and related laws. We have attempted to assess the impact of the sudden imposition of these responsibilities upon state alcohol control agencies in the event ATF is dismantled.

CONSUMER PROTECTION

ATF administers an active consumer protection program under provisions of the FAA Act. The Act outlines national standards for labeling and advertising which prohibit false, deceptive, obscene or erroneous information which might mislead the buying public. Regulations under the act set forth well-defined standards of identity every domestic or imported alcoholic beverage product must meet before it reaches the marketplace. In this way, consumers can be assured that the product contains what the label claims.

The dissolution of ATF programs would leave oversight in this area entirely to the states. Replacing the single, on-going federal program with 50 new programs would represent tremendous inefficiency. Aside from efficiency considerations, it would be literally impossible for the states to adequately ensure product integrity and truthful labeling and advertising, due to the extensive movement of these products in interstate and foreign commerce.

PRODUCT INTEGRITY

ATF's program of on-site inspections, laboratory testing, record audits, and regulatory guidance is responsible for assuring the American public that all imported and domestic alcoholic beverages they purchase contain what the label claims, and assures the public that they do not contain foreign or harmful substances and are similar to other products so labeled.

To verify that the label accurately reflects the contents of the package, ATF employs both laboratory testing and on-site inspections. During on-site inspections, production records are examined to verify such things as varietal and vintage label statements, age statements on whiskey, etc. Manufacturer's quality control over bottling fill and alcohol content are also carefully evaluated as a means of protecting the consumer from deficient products.

ATF guards against the presence of foreign or harmful substances in alcoholic beverages through laboratory analyses and on-site review of production processes and ingredient use. The Bureau's laboratories provide some of the most sophisticated equipment and experienced personnel for testing alcoholic beverages that is available anywhere. Samples of domestic and imported products secured by ATF field personnel are routinely tested for foreign or toxic substances, alcohol content, container fill, ingredient usage, etc.

Finally, as a result of federally regulated "standards of identity" that ATF administers, consumers are provided assurance that an alcoholic beverage produced either in the U.S. or in a foreign country and labeled as a certain type will have the characteristics they expect of that product. It is these standards that distinguish a blended whiskey from a bourbon or a scotch, and these standards that set minimums for producers to meet before they can claim a varietal, vintage or age statement.

If ATF's enforcement programs are dismantled or severely curtailed, it will be nearly impossible for the states to institute programs to replace ATF's product integrity activities.

The majority of all alcoholic beverages sold in any state are not produced within its borders. Consider the problems that a state would encounter in attempting to assure that products manufactured in another state are in compliance with their laws and regulations. States would have no authority to make out-of-state on-site inspections, and would either have to accept the producer's representations on blind faith, develop a cumbersome, inefficient, expensive system of state of origin certifications, or duplicate expensive chemical testing procedures. Some states would undoubtedly be better able to supervise/inspect operations and, as a result, the quality of consumer protection activities would vary widely. Regardless of the system implemented by the states, it is certain to be less efficient, less effective and more expensive than present federal regulations.

Most states do not have the laboratory capability to take over testing of alcoholic beverages and are unlikely to be able to fund the establishment of separate facilities - which, by the way, would be a ludicrously inefficient use of tax money.

If each state drafted regulations on standards of identity for alcoholic beverage products, one possible result might be 50 different variations of a standard of identity for one product. Needless to say, this would pose enormous difficulties for the many foreign and domestic producers who presently distribute their products nationwide.

LABELING AND ADVERTISING

In carrying out the mandate of the FAA Act, ATF has established, by regulation, requirements and prohibitions for alcoholic beverage labeling and advertising. All labels are required to be reviewed by ATF before use to ensure that required information is present and that prohibited information is not. Advertising is monitored on a sampling and complaint-response basis. Both labeling and advertising review are small ATF Headquarters operations.

Federal regulations require that alcoholic beverage labels provide consumers with accurate product identification (class and type), statements of net contents, alcohol content, manufacturer and brand identification, country of origin for imports, certain coloring and flavoring identification, etc. These regulations also prohibit labeling of alcoholic beverages that is false, misleading, disparaging of a competitor, obscene or indecent, or which indicates theraputic or medicinal qualities, etc.

In summary, regulation of labeling, advertising and product integrity by state alcohol control agencies poses a myriad of problems, many of which appear to be insurmountable. Foremost among them is the law itself. Presently, only 18 states have adopted the FAA Act or nearly identical provisions as the law in their respective states. In almost all cases, mainly due to lack of personnel, funds and necessary training, ATF is almost exclusively relied upon for either actual regulation or for providing a great amount of assistance to the state agencies. Presently, the Bureau has at its disposal many trained personnel, already technically expert in all phases of the alcohol industry, and already performing statutorily required tasks. Both the industry itself and state agencies rely upon ATF to maintain control over the interestate aspects of the industry. Since the existence or enforcement of state statutes is often inconsistent and unequal in application, if a central authority such as ATF did not exist, the industry would likely encounter a bewildering and sometimes contradictory set of laws and regulations. As an example, the lack of a single central authority could possibly result in the requirement for a different label in each state for the same product. Numerous other jurisdictional problems would result if ATF were abolished and state agencies were faced with regulating these aspects of the industry.

Consumer protection is an area where a shift of responsibility from the federal government to the states would be extremely inefficient and impractical. Consider the waste of establishing 50 separate state units for reviewing labels, to replace the work done by one small unit in ATF not to mention the chaos caused by 50 separate sets of regulations and interpretations for the industry to contend with. The alternate and likely result of eliminating federal oversight would be no oversight.

FOREIGN TRADE

Under the provisions of the FAA Act and related laws and regulations, ATF has a significant role in dealing with other U.S. Government bodies and corresponding representatives of foreign governments concerning both foreign alcoholic beverage products imported into the United States and domestic products exported to other countries.

Distilled spirits, wine and malt beverages comprise a significant portion of foreign and domestic products traded in international markets. Many of our trade partners regulate the alcoholic beverage industry in their respective countries with a philosophy that differs dramatically from our own. ATF has developed a reputation for efficiency and evenhandedness in dealing with the representatives of these trading partners to resolve recurring and fundamental disputes concerning questions such as the labeling of wines, and agreed upon standards of identity for products.

For example, over the past decade negotiations have been ongoing between a U.S. Inter-Governmental Delegation and members of the European Economic Community (EEC) concerning reductions in non-tariff trade barriers which have, in the past, prevented entry of domestic wines into EEC member countries. ATF officials have been the leaders of the U.S. delegation, since the Bureau is widely regarded by the other delegation members as having the foremost technical expertise on matters of alcoholic beverage production and labeling. Other delegation members are: the U.S. Trade Representative, the Agriculture, State and Commerce Departments, and the Customs Service.

ATF also certifies U.S. alcoholic beverage products as to standards of fill, labeling information and production regulations. Without these certifications, many foreign governments would not allow entry of U.S. products into their countries.

State alcohol control agencies have had little experience in dealing with representatives of foreign governments, and would find it difficult to match the accomplishments achieved by ATF. The administrators of state agencies can also foresee various legal problems which might result if there were no centralized federal authority such as ATF to deal with certain requirements of foreign laws. One in particular which comes to mind is the previously discussed requirement for certifications of exported products by a federal authority. In fact, it is doubtful that foreign governments would even accept state-issued certifications. Needless delays and harm to the industry might result until foreign and U.S. regulations and procedures are revised. By virtue of its unique position as a centralized authority, ATF is able to deal with its counterpart representatives of foreign governments on an equal level to quickly and effectively resolve international issues. To fragment this responsibility among the various state agencies might negate many of the advantages and benefits which the Bureau's efforts have already achieved for U.S. industry members.

MARKETING PRACTICES

ATF is also responsible for administering the marketing practice provisions in the FAA Act which are designed to ensure a competitive business environment. Practices specifically prohibited by the Act include such things as commercial bribery, kickbacks and coercion by suppliers who desire to tie up a trade buyer's business at the expense of competing suppliers.

Basically, the Bureau program in this area consists of a task force and investigation approach with which ATF personnel have been quite successful in the pursuit of such violations, and numerous administrative settlements and prosecutions have resulted. Over the years, this program has proven to be both professional and efficient. ATF personnel are knowledgeable regarding the laws and regulations in this area, and are able to respond to complaints quickly from the public, other industry members and state and local authorities, and to initiate timely and complete investigations when and where violations are suspected.

The investigation of marketing practice violations has been one of the most prominent examples of cooperation between ATF and the various state agencies. Joint efforts between ATF and state personnel, and investigative and technical advice provided by ATF to state agencies has resulted in the most effective use of combined resources.

Many problems in regulating marketing practices are similar to those discussed concerning consumer protection, if ATF were to be dismantled. Once again, lack of uniformity in the various state laws would create significant barriers in dealing with out-of-state industry members suspected of violations. Because of the interstate nature of the alcoholic beverage industry, ATF is in a singularly advantageous position to deal with marketing practice violations. Many products are distributed either nation-wide or in multi-state regional areas. Suppliers and distributors are located in all states. ATF personnel are able to pursue violations on a nationwide basis -- from home offices of industry members to the locations where specific violations have occurred. On the other hand, states would be severely limited in their ability to conduct investigations outside of their own territories. A cumbersome system for coordinating interstate investigations would have to be developed where none is now needed.

Current lack of personnel and training would be a problem confronting state agencies if the responsibility for regulating marketing practices were suddenly thrust upon them. Present state programs are focused almost exclusively upon the retail level, mainly limited to regulating state and local licensing, drinking age provisions, hours of operation, and other matters of a somewhat narrow scope. The establishment of an effective marketing practice regulation program would involve, in most states, development of new laws and programs, and an almost complete rethinking in the objectives and missions of the state alcohol control agencies. Without ATF to administer the effective program that already exists, the potential for abuses is great, as is the threat of domination of the industry by the largest and most powerful members.

PERMITS

Under the IRC and FAA Act, ATF administers a system of permits and registrations for all persons or firms engaged in producing, importing, using or distributing alcohol, or who produce or distribute alcoholic beverage products. This encompasses the entire legal alcohol industry, both beverage and industrial.

As mandated by the Crude Oil Windfall Profit Tax Act of 1980, ATF issues permits for those engaged in producing, processing, storing, and using or distributing alcohol exclusively for fuel. Because of the need for alcohol fuels as an alternative energy source, ATF provides prompt assistance to persons applying for permits to engage in business in this portion of the industry. Permits are issued expeditiously and, wherever possible, administrative procedures are simplified.

The permit system is a control mechanism designed to help ensure the collection of excise taxes and enforce the other laws related to alcohol by screening out potential law breakers (felons, etc.) and by suspending or revoking permits of those who fail to comply.

ATF routinely conducts thorough investigations of all applicants for permits to engage in business in the alcohol industry. These investigations are conducted to determine whether the applicant has met the requirements of both federal and state laws and is eligible for a permit or approval to operate. Complete verifications and analyses are made of financial information to identify any hidden ownership and to ascertain the legitimacy and viability of proposed businesses. Personal background investigations are conducted into the business character and history of applicants to determine any criminal record and their eligibility for a permit.

Almost all states presently have permit requirements for those wishing to operate businesses in the alcohol industry. However, issuance of such permits by state agencies is often handled administratively. Most states do not have the personnel resources necessary to conduct an extensive field investigation of an applicant. They have found the screening of financial and personal background information done by ATF to be sufficient.

Most states have no fuel alcohol regulation program of their own, and have relied almost exclusively upon the program developed by ATF to use as a model for their own. Extensive use is made of lists of alcohol fuel permittees provided from ATF files at the Bureau's regional and area offices in order for the state agencies to be aware of what persons or firms are engaged in this important activity in their respective states.

If the extensive ATF application investigation program ceased, there is presently no way it could be replaced by state agencies immediately, if at all. Most state agencies do not have the number of agents required to undertake such a program, nor the training necessary to conduct it effectively. It would also be impractical for state agencies to investigate out-of-state applicants, as there might be a question of the authority an agent from one state might have to conduct an investigation in another state.

CONCLUSIONS

Our review of ATF's mandates and responsibilities under the IRC, the FAA Act and related laws and regulations has led the administrators of state alcohol control agencies to the conclusion that there is a continued need for the existence of the Bureau as the centralized authority for the regulation of the alcohol industry in the United States.

We have examined ATF regulatory programs for consumer protection, the administration of a permit system, foreign trade, and trade practices. We feel that existence of such programs at the national level is essential for an equitable and prosperous alcohol industry. We have pointed out the difficulties that state agencies would encounter should ATF be dismantled, with the responsibilities for the Bureau's programs being preemptorily transferred to the states. Lack of personnel and training are serious obstacles which almost all state agencies would be faced with at the outset in attempting to replace ATF's programs with their own.

Until state programs in these important areas can be either enhanced or established, we feel that serious harm could be done to maintenance of a competitive business environment, optimum collection of revenues, advantages enjoyed in foreign trade, and protection of the interests and welfare of the consumer. For these reasons we support the continued existence of the Bureau.

GENERAL QUESTIONING

Senator **Abdnor**. We thank you, gentlemen, for your very fine testimony. I have a few questions here, but first let me introduce the distinguished gentleman on my left, your right, Senator Cannon. He was kind enough to drop around, and I will be calling on him with the next panel coming up.

STATES UNEQUIPPED TO PROTECT CONSUMERS

First let me ask you, the BATF is responsible for protecting the public health of the American consumer from misbranded, adulterated and short-filled alcoholic beverages. I think we have heard this, but are the States now equipped or do they have the capability to protect their citizens from these dangers without BATF and an adequately funded Federal presence?

Mr. **Nuzum**. I will try that, Mr. Chairman.

No, the States cannot handle this. I can give you an example of the State of Florida. Our agency is set up similar to what Mr. McKinney described. We handle in Florida the licensing, tax collection, and enforcement. A very strong program we have had for several years that I have been there had to do with consumer protection on refilling, which is what you are just talking about. We made a very fine refilling case in Miami. The only problem is the BATF can't handle the investigation of the seized bottles for us now. So we had to dismiss that case because it couldn't be testified to. So the States absolutely cannot handle many of the things BATF is doing.

STATE ENFORCEMENT OF FEDERAL LAWS

Senator **Abdnor**. In the first place, if your laws cover the same areas, are you in a position with State law to go in and enforce Federal law? Can you do that, even if we didn't have the BATF there? We still have the Federal laws on the books. Is there a conflict there on how far you can go in enforcement?

Mr. **Nuzum**. No, sir, we could do that. We have about 135 enforcement agents in the State of Florida, which is a rather large place. But to tell the truth, Mr. Chairman, we have enough difficulty trying to enforce Florida's own laws without worrying about all Federal laws also. While we could from a theoretical standpoint, practically we could not. We do not have the resources and the Florida Legislature is not about to raise our level of personnel to handle what the ATF does through deterrence. The Federal Government is a tremendous deterrent. If that is gone, it is gone.

Mr. **Soderman**. Mr. Chairman, I might answer that question just briefly for Arizona's benefit. Arizona only has one law which is similar to Federal law, and that has to do with fair trade practice violations. It is almost worded the same as Federal law. Arizona has the capability of enforcing that same Federal law in the State of Arizona. But that is the only law within the State of Arizona that alines itself with Federal statute.

Mr. **Flynn**. Sir, I would categorically state there would be no way on God's green earth that the State of New York or any other State could take over the duties of ATF in any type of a viable manner whatsoever. It is incumbent upon the Federal Government to protect the people of the United States. We cannot, and without question there is no State or combination of States that will ever be able to enforce the laws, whether they are Federal or their own, and have to do that which the ATF should be doing at all times.

IMPORTATION PROBLEMS FOR STATES

Senator **ABDNOR**. Speaking of imported liquor coming into a country, I was just wondering, in New York, if you had the manpower, do you have the right to go in there?

Mr. **FLYNN**. No, I don't believe we do. But the Federal Government by treaty does have the right to negotiate and so forth. We in the State of New York, or Texas, California, any of our States, closed or open, would not have that right.

What would happen with the people? I mean, what are the standards they are to be guided by? It is an impossibility to do what they wish to do, the Government, which is to wipe out the ATF. We would have no protection from the very different types of alcohol coming from all over the world, never mind from State to State. We don't have the right to tell a State what to do and we have to ask for cooperation. We cooperate in a mutually advantageous position. We have no right to tell Texas or Arizona, Florida, what to do, or Massachusetts or anywhere, and they don't have the right to tell us. And it never can be that way. So we cannot have an enforcement program to protect the people of all the States.

Senator **ABDNOR**. For the record, we can say then that there are areas that the State would be helpless in, even if they tried to do something.

Mr. **FLYNN**. Completely.

Senator **ABDNOR**. So it isn't always just a matter of not having the numbers; it is actually technical jurisdiction of Federal and State.

Mr. **FLYNN**. Yes.

REVOCATION OF OUT-OF-STATE PERMITS

Mr. **SODERMAN**. Mr. Chairman, in Arizona we do, as I remarked in my presentation, license all out-of-State suppliers and license even foreign suppliers. We would have the power to revoke those permits, those licenses, should any of those suppliers violate the law. But we don't have the personnel or the expertise, the laboratories, or anything else to determine whether they have even violated the law or not. That is where we rely upon BATF's expertise and investigative techniques.

PRIMARY PURPOSE OF FEDERAL ALCOHOL ADMINISTRATION ACT

Senator **ABDNOR**. What do you see as the primary purpose of the Federal Alcohol Administration Act, to benefit and protect the public or private industry, or both?

Mr. **MCKINNEY**. Mr. Chairman, I might respond to that. I don't believe that the Federal law has been significantly amended since it was enacted back in the 1930's following repeal. I would stand to be corrected on that, but that is my recollection.

I believe the Federal law was enacted in the first place to protect against many of the terrible evils that really did occur prior to and during national prohibition. I think it is pretty safe to say there was not really an industry in place at the time that the Federal law was enacted originally. I am certain there was a fledgling or a recovering industry. But the Texas law and the Federal law fairly well track in terms of when you speak of basic principles of the law, which we endorse and in fact hold dear, and that is the three-tier system, the prohibition against the tide house, because it caused so many problems before and during prohibition. That is how I would respond to that, Senator.

Senator ABDNOR. Thank you.

Mr. NUZUM. If you will excuse me, Senator, there isn't any question in the minds of any of us and any of our colleagues that the purpose of the Federal Alcohol Administration Act is to protect the industry from themselves, and by protecting industry from themselves you protect the consumer. If you didn't have a strong deterrent of Internal Revenue agents, there is hardly a person in this room, and I am not demeaning anybody, who wouldn't clip on his income tax. You know, we have a strong deterrent. Well, gentlemen, the alcoholic beverage industry is a legal industry. Let's keep it that way with the Federal Government's help.

Senator ABDNOR. Thank you. You made a good point.

ILLEGAL GASOHOL PRODUCTION

In the February 17, 1982 edition of the Washington Post there was an article reported that the BATF had uncovered an alleged scheme by a licensed Tennessee producer of alcohol for gasohol who illicitly diverted his production to beverage channels. By so doing he avoided paying the heavy Federal and I presume State excise taxes. A potentially dangerous public health hazard could have resulted.

With the growing production of alcohol for fuel, how would Treasury's plan to abolish the BATF and to weaken regulatory enforcement by huge budget cuts affect the ability of the States to deal with such threats?

Mr. FLYNN. I would say I don't know how many States at the present time have a law that deals with the gasohol situation, but I know the State of New York doesn't. We follow the Federal Government as to whether to issue a permit or not.

But back to potential. I did not know what you were speaking of until now, Senator. Here is a prime example of what can happen when you don't have the Federal control on the potential production hazard to the people, just beyond the imagination, which would be the same thing from any other source beyond the United States of America. There you have the same potential.

As far as alcohol or any byproducts coming into the United States without the controls of the ATF, as well as the situation of not only just the tax aspects, this is bootlegging in the highest prime sense of the word. This would just continue to flourish and spread. Now you really have a problem as far as collection of any kind of excise tax in any part of the country.

Mr. **Soderman**. Mr. Chairman, Senators, there are tens of thousands of gasohol units in the United States. Even a small, nonpopulous State like Arizona has nearly 100 gasohol permittees in it. I know the other States have thousands. The opportunity is there for these people to violate and bootleg. Yet there is no enforcement of that act.

ORGANIZED CRIME AND THE LIQUOR INDUSTRY

Senator **Abdnor**. I have to believe that you feel the abolishment of the BATF, or even the weakening of the FAA Act, would impair your efforts to keep organized crime out of the liquor industry. Is that correct?

Mr. **Flynn**. No question.

Mr. **Soderman**. No question.

Mr. **McKinney**. Yes.

Mr. **Nuzum**. Yes.

Mr. **Flynn**. That is what I referred to earlier. The illegal type would be coming into the State.

Senator **Abdnor**. Thank you, gentlemen.

Senator Proxmire has just come in. He is not only a member of this subcommittee but the ranking member of the entire Appropriations Committee. Would you care to ask any questions, Senator?

Senator **Proxmire**. No. Thank you very much, Mr. Chairman. I appreciate it. I especially appreciate the introduction, too. Thank you.

Senator **Abdnor**. Thank you.

Gentlemen, we thank you very much. We may have questions to submit to you later that you can answer in writing.

Mr. **Nuzum**. Thank you, Senator.

INTRODUCTION OF NEVADA WITNESS BY SENATOR CANNON

Senator **Abdnor**. I would like now to call on Senator Cannon.

Senator **Cannon**. Mr. Chairman, and Senator Proxmire, it is a pleasure for me to introduce to you Mr. Ray Norvell, a constituent of mine from Las Vegas, Nev.

Mr. Norvell is a very respected businessman in our community. He is executive vice president of the DeLuca Liquor & Wine and Nevada Liquor & Wine. He is also president of the Nevada State Association of Liquor Wholesalers.

He is here today to testify on behalf of the liquor wholesalers in my State concerning the proposed reorganization of the Bureau of Alcohol, Tobacco and Firearms, and specifically the proposal to transfer alcohol to the Customs Service. It is indeed a pleasure for me to introduce to you Mr. Ray Norvell.

Mr. **Norvell**. Senator Cannon, thank you.

Senator **Abdnor**. Senator Proxmire?

Senator **Proxmire**. Thank you, Mr. Chairman.

INTRODUCTION OF WISCONSIN WITNESS BY SENATOR PROXMIRE

Mr. Chairman, I would like to introduce a distinguished constituent of mine, Mr. Russell Cleary, president, chairman of the board and chief executive officer of the Heileman Brewing Co.

We are very proud of the Heileman Brewing Co. in Wisconsin. We are delighted to have the top company officer here in Washington to testify on the prospective reorganization of the BATF. I know the Heileman Brewing Co. and other key members of the alcohol industry are concerned primarily about what steps the Treasury Department will take to continue enforcement of the Federal Alcohol Administration Act under the new reorganization plan. The industry appears to be united in its support for full enforcement of this important statute. I believe the subcommittee should view any proposed cutback in enforcement of this Act with deep concern.

I might add, Mr. Chairman, that the Heileman Brewing Co. has had an astonishing record of growth and remarkable efficiency. It is admired not only in the brewing industry but all over the country for its competence and for the great ability of its management. And in Wisconsin, Mr. Cleary is recognized as the leading figure in that fine company.

I am especially proud of Mr. Cleary. This is the first time I have had an opportunity to introduce and boast and brag about Mr. Cleary. But I am delighted to do it because he is a real star in our State and we are extraordinarily proud of him.

Mr. **Cleary**. Thank you, Senator.

Senator **Proxmire**. As you know, beer is big in Wisconsin. [Laughter.]

Senator **Abdnor**. I heard that.

Thank you, Senator Proxmire. I don't know where that comes from, but I guess it is the most publicized secret in the country.

We certainly welcome the panel before our committee. You couldn't have had any higher recommendations than you gentlemen received from Senator Cannon and Senator Proxmire.

I don't know how you care to proceed, but whoever is the spokesman for the group, you may proceed.

Deluca Liquor & Wine, Nevada Liquor & Wine, and Coors Wholesale Distributors of Wines and Spirits

STATEMENT OF RAY NORVELL, EXECUTIVE VICE PRESIDENT AND OFFICER

OPPOSITION TO FRAGMENTATION OF BATF FUNCTIONS

Mr. **Norvell**. Again, I would like to thank Senator Cannon for the introduction.

Mr. Chairman, as Senator Cannon said, my name is Ray Norvell. I am the executive vice president and officer of Deluca Liquor & Wine and Nevada Liquor & Wine, and Coors Wholesale Distributors of Wines and Spirits, with its principal place of business located in Las Vegas, Nev. This wholly owned family operation has been in existence since 1940.

I appreciate the opportunity to appear before your subcommittee to express my deep concern over Treasury's proposal to fragment the functions of the Bureau of Alcohol, Tobacco and Firearms and to curtail enforcement of the Federal Alcohol Administration Act [FAA Act]. In my view, such an action would be counterproductive and contrary to the best interests of the Government, the public and the industry as a whole—whether the fragmentation is affected by dividing the functions of BATF among other agencies or by subordinating them within another agency of the Treasury Department.

Because of the interrelated and overlapping functions mandated by both the Internal Revenue Code and the Federal Alcohol Administration Act, it is abundantly clear from legislative history that Congress contemplated that all such functions would be administered under the Treasury Department as an independent operation.

I am especially concerned with any possible curtailment of relaxation of regulatory controls which might in any way facilitate entry of organized crime into our industry. The meticulous scrutiny by BATF of the individuals involved in the operations before issuing basic permits has served as an effective safeguard against such entry. The spectre of conditions which prevailed during the prohibition era is appalling and our Government must resist any weakening of regulatory controls which might lead to a recurrence.

In addition to the vital function which I have just described, the BATF has the primary responsibility for supervising and administering the widest range of functions, all of which require a significant Federal presence.

Notwithstanding passage of the 21st amendment granting the States virtually unlimited authority to regulate the importation of alcohol beverages and to structure the method of distribution, the Federal Government has retained a substantial measure of control.

AREAS OF CONTROL BY BATF

Among the most significant areas of control retained by the Federal Government with implementation administered by BATF under mandate by the FAA Act I would mention:

(1) Establishment of standards of identity to insure product integrity;

(2) Prescribing meticulous standards for truthful labeling and advertising;

(3) Again, one of the most important is the careful scrutiny given to all persons desiring to enter the industry;

(4) Enforcement of trade practice rules designed to avoid unfair competition and anticompetitive conduct.

REVENUE PROTECTION

The Internal Revenue Code also mandates a broad range of functions administered by BATF, the most important of which is the protection of the revenue.

Having said all of that, I should also like to say that while it might be more comfortable running my business with less regulatory control, that is not a matter of choice. When I was granted my Federal basic permit to engage in the wholesale liquor business, I knew up front that the permit was conditioned on compliance with the trade practice provisions of the FAA Act.

After many years of practical operation, I do not regard the requirement that neither I nor my competitors may engage in monopolistic or anticompetitive conduct as an unreasonable business restraint. In my view, it is the general public which is the beneficiary of such restraints.

I was keenly aware from the beginning that the nature of the product which I was selling required a higher measure of regulation and control than most other commodities in commerce.

NECESSARY REGULATION AND CONTROL OF ALCOHOL INDUSTRY

I would again emphasize that ours is a unique industry in that abusive consumption of the product we sell can lead to serious destructive consequences. We must recognize that alcohol beverages are commodities with extreme socially sensitive implications and cannot be marketed like any other product in our society. To ignore this distinction in today's society is an absolute delusion. We, in the industry, are especially sensitive to this distinction. It is not without a valid public purpose that no generally marketed commodity is held to a greater measure of accountability for law compliance by regulatory control at both Federal and State levels than is the alcoholic industry.

Any curtailment or relaxation in the enforcement of the mandated provisions of the FAA Act would, in my judgment, be contrary and prejudicial to the best interests of our Government, the public and the industry.

FUNDING OF FAA ACT

Finally, I would call the subcommittee's attention to the joint resolution—Public Law 97-92 at section 109—which specifically provides, among other things, "that of the funds made available by this continuing resolution for the Bureau of Alcohol, Tobacco and Firearms, $15 million shall be available solely for the enforcement of the Federal Alcohol Administration Act during fiscal year 1982."

In view of the Treasury Department's repeated announcement that it does not intend to fund the enforcement of the FAA Act, I think it is imperative that the final Treasury appropriation bill incorporate a similar provision to that contained in the continuing resolution and respectfully urge your subcommittee to so do.

I am privileged to be president of the Wine and Spirits Association of Nevada. This is a statewide organization that encompasses all wine and liquor distributors in the State. I am confident that the views which I have expressed are shared by virtually every member of our association.

Again, I would like to thank you for the opportunity to speak before you.

Senator ABDNOR. Thank you, Mr. Norvell.

Mr. CLEARY. I want to thank Senator Proxmire for that introduction and also the members of the committee for this opportunity to appear here today.

G. Heileman Brewing Co., Inc., LaCrosse, Wis.

STATEMENT OF RUSSELL G. CLEARY, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, G. HEILEMAN BREWING COMPANY, INC.

EFFECT ON NATION OF SUSPENDING FAA ACT

Mr. Cleary. My name is Russell G. Cleary, chairman, president and chief executive officer of G. Heileman Brewing Co., Inc., LaCrosse, Wis. I am testifying before you today not as a representative of any malt beverage trade association but as an individual brewer representing my company. However, I do feel the views I am expressing here today are those of the majority of the brewing industry.

I appreciate the opportunity to appear before this subcommittee to express my concern over the Treasury Department's efforts to dissolve the Bureau of Alcohol, Tobacco and Firearms, thereby effectively suspending the enforcement of the Federal Alcohol Administration Act. To allow Treasury to continue on this path of no return would be against the best interests of our industry, present and future competition in our industry, the welfare of the public as well as the interests of the Government itself. This is true regardless of whether Treasury seeks to accomplish its end by assigning the functions of BATF to one agency or dividing it among several agencies of the Treasury Department.

COMPETITIVENESS OF BEER INDUSTRY

The beer industry is very competitive even when everyone plays by the rules. I have been president and chief executive officer of Heileman for 11 years. Prior to that time I was general counsel and house counsel for a total of 22 years in the industry. The industry is, in my opinion, not capable of self-regulation. Let us look at the record of the last 6 or 7 years.

Two top brewers at that time paid offers in compromise of over three-quarters of a million dollars each to the BATF for violation of the trade practice rules. Several regional breweries also paid offers in compromise of lesser sums, and there was also a grand jury investigation of another major brewer. These offers in compromise resulted from a very thorough and complete investigation by the BATF. Where would the industry be today if the BATF had not existed to "police" these practices and clean up our industry.

TOP NATIONAL BREWERS

My statement today is not based on a holier-than-thou attitude toward our industry but, rather, on the basis of economic reality. Ten years ago the top two brewers in our industry had 30 percent of the total beer sales. Five years ago the top two brewers had 40 percent and now the top two brewers have 55 percent or more of all domestic beer sales in the United States.

The next closest competitor had less than 8 percent. The sheer economic imbalance gives the largest brewers great leverage. As an example, they now control nearly all the TV sports sponsorships in this Nation.

If we accede to the demands of the Treasury Department in the elimination of the BATF and, as a direct consequence, the lack of enforcement of the trade practice regulations of the FAA Act, the Government will be accelerating the demise of the small local and regional brewer. It is difficult enough for them to compete against the industry giants even now. To deny them the protection afforded them by BATF is certainly going to hasten demise.

ADVERTISING AND LABELING REGULATIONS

There has been a lot of discussion about the lack of need for the continuance of enforcement of advertising and labeling regulations. Failure to enforce these existing regulations would, in our judgment, create chaotic conditions in our extremely competitive industry. Standards were set for truthful labeling and advertising in order to protect the buying public. To even suggest the abandonment of the enforcement of such regulations makes a mockery of Congress and its passage of the FAA Act.

Also, the alcoholic beverage industry is a socially sensitive industry. It is indeed an industry that cannot market its products in the same fashion as can the makers of television sets, apparel, automobiles or most other consumer products. It is in the greater public interest to see this industry comply with the law and that the BATF continue to exist to enforce that law.

Any relaxation in the enforcement of the provisions of the FAA Act is not in the best interests of the industry or the general public.

In the interest of preserving competition in the brewing industry, we urge you to retain adequate funding specifically allocated to the BATF for regulatory enforcement of the FAA Act, and especially in the trade regulations area, advertising and labeling.

In addition, we recommend, and respectfully suggest, that all FAA Act regulatory enforcement functions be kept together and retained as the BATF within the Treasury Department.

Again I appreciate the opportunity to make these statements. Thank you.

Senator **Abdnor**. Thank you.

Tualatin Vineyards, Forest Grove, Oreg.

STATEMENT OF WILLIAM L. FULLER, VICE PRESIDENT AND WINEMAKER, TUALATIN VINEYARDS AND DIRECTOR, OREGON WINE GROWERS ASSOCIATION

STREAMLINING WINE REGULATIONS

Mr. **Fuller**. Mr. Chairman, my name is William L. Fuller. I am vice president and winemaker of Tualatin Vineyards in Forest Grove, Oreg. I am also a director of the Oregon Wine Growers Association.

We in the Oregon wine industry strongly desire that the vital alcoholic beverage regulatory enforcement functions be retained with adequate funding. Congress vested these functions in the Treasury Department when it passed the Federal Alcohol Administration [FAA] Act in 1935. These functions include regulation of permits, labeling, advertising, trade practices, and international operations.

We have long realized that many regulations are burdensome and unnecessary and can be significantly eliminated or modified. In fact, in November 1981 the Wine Institute, after careful study, submitted to Secretary Regan many specific suggestions designed to greatly streamline the regulations governing the production, marketing, labeling and advertising of wine.

CONTINUING FEDERAL PRESENCE NECESSARY IN REGULATING ALCOHOL

However, while we continue to oppose abusive regulation, it would be politically unrealistic for this administration to dismantle the Bureau in such a way as to completely scuttle regulatory enforcement. A continuing Federal presence is necessary because wine and other alcoholic beverages are unique and socially sensitive products. The socio-political history of this country with two constitutional amendments governing our very existence and subsequent congressional legislation prescribing our daily commerce assure continued community, media and congressional debate and review. The public perception that this administration is entirely abandoning alcoholic beverage regulatory functions could lead to public and legislative agitation for even more Federal and State restrictions and controls.

EXCISE TAX BURDEN ON ALCOHOL INDUSTRY

Similarly, fiscal and excise matters guarantee special debate and legislative oversight which link revenue protection with continued regulatory enforcement. Alcoholic beverages bear an unmatched excise tax burden yielding over $12 billion to Federal, State and local governments. Taxes at the Federal level constitute the third largest source of revenue, yielding almost $6 billion to the Treasury of the United States.

Moreover, if the administration opens the floodgates to totally unregulated alcoholic beverage traffic, it will invite a return of the very conditions that triggered prohibition. In fact, in enacting the FAA Act, Congress found that abuses, which are now prohibited by the act, were considered largely responsible for the evils which led to prohibition.

IMPACT ON INTERNATIONAL TRADE

Failure to provide minimum Federal regulation would adversely affect international trade. Talks with the European Economic Community, culminating years of negotiations to establish international wine standards, were cancelled. Similar negative reactions can be expected from numerous foreign nations which actively trade with the United States and are concerned about product integrity without Federal labeling, advertising and standards enforcement. Moreover, lack of Federal enforcement of labeling provisions could result in much improperly labeled foreign wine coming into the American marketplace. Already the United States has a $659 million imbalance in wine trade, or 2.2 percent of the total American trade deficit.

The wine industry, and indeed the entire alcoholic beverage industry, is one of the most competitive industries in the American economy. Moreover, the major justification for total deregulation, namely elimination of an artificial and inflated price structure, cannot be found at all in the alcoholic beverage industry. This is in sharp contrast to industries, such as transportation, where deregulation has been justified as in the public interest.

I therefore respectfully urge that adequate funding be appropriated for retention of the alcoholic beverage regulatory enforcement functions. Regulatory enforcement carries not only a revenue dimension but also a clear public benefit. It is therefore in the administrative interest of the Federal Government to see that regulatory enforcement continues to run smoothly.

Thank you for this opportunity to share these thoughts with you.

Senator **Abdnor**. Thank you.

Old Fitzgerald Distillery, Louisville, Ky.

STATEMENT OF NORMAN L. HAYDEN, VICE PRESIDENT AND GENERAL MANAGER, OLD FITZGERALD DISTILLERY, LOUISVILLE, KY.

Mr. **Hayden**. Senator Abdnor, members of the committee, I am Norman L. Hayden, vice president and general manager of Old Fitzgerald Distillery, Louisville, Ky., testifying before you today as a representative of the members of the Distilled Spirits Council of the United States, Inc., known as DISCUS. DISCUS is a trade association whose members represent the producers and importers of more than 90 percent of the distilled spirits sold in the United States today. My parent company is a domestic distiller and also an importer, and in this connection I have attached to this testimony a letter from the National Association of Beverage Importers [NABI] to Assistant Secretary John Walker of Treasury and a letter from NABI to Secretary Regan representing the NABI's position on these critical issues of this hearing.

The distilled spirits industry appreciates the opportunity to comment at these hearings on the Bureau of Alcohol, Tobacco and Firearms [BATF] and its administration of the Federal Alcohol Administration [FAA] Act. For the past 10 years all laws and regulations pertaining to beverage alcohol have been administered by the BATF as presently constituted and the industry believes they have done an excellent job in protecting the public and protecting Government revenue.

STATUS QUO OF FAA RECOMMENDED BY DISTILLED SPIRITS INDUSTRY

It is the position of the distilled spirits industry that the administration of the Federal Alcohol Administration [FAA] Act and certain provisions of the Internal Revenue Code should continue to be the responsibility of a separate, specialized unit in Treasury and that the beverage alcohol functions should continue to be performed with the same degree of expertise and experience as now exists in the BATF.

There are certain functions mandated by the FAA Act which must be performed. If the agency charged with administering these laws should fail to carry out the mandated functions, then members of the distilling industry would be placed in the position of operating in violation of the law or of not operating at all.

These functions include: (1) issuance of permits; (2) label approval; and (3) carrying out regulatory functions under the Internal Revenue Code, including registration of plants, issuing and amending regulations necessary to implement the Internal Revenue laws, such as the classification of products for tax purposes, checking compliance with approved formulas and issuing rulings to cover situations not covered specifically by regulation.

I would like to address a few of these points specifically to illustrate the extent of the effect on our industry, the public and the Government if these functions are not properly and efficiently performed. For example, no person can engage in the business of distilling (and/or several other related businesses) without holding a basic permit under the FAA Act. Only BATF can issue such a permit. No person can engage in the business of a distiller or processor unless his plant has been registered. Only BATF can register the plant or modifications thereof. The power to issue permits includes the authority and the responsibility to investigate applicants for the permits, to amend the permits and to suspend, revoke or annul the permits under statutorily specified conditions.

LABELING APPROVALS

Label approvals are another mandated function. A bottler can ship or deliver spirits in bottles bearing only approved labels. If there is no agency with personnel and responsibility to approve labels, the sale and shipment of distilled spirits in bottles would be substantially hindered or precluded. Also, no new product could be sold and no changes to existing products could be made which would require a label modification. Since the advertising provisions of the FAA Act closely parallel the labeling provisions, enforcement by one administering agency is essential to insure that advertising is consistent with labeling.

Certain provisions of the Internal Revenue Code apply to distilled spirits and must be implemented and enforced to protect and to collect the great amount of revenue due to the Federal Government from the distilled spirits industry. On many occasions industry members must file claims for refund, credit or drawback of tax on distilled spirits. If the administering agency should fail to prescribe and enforce procedures and standards for such claims and to process the claims, then claimants could be deprived of their legal rights to reimbursement.

PRODUCT SECURITY AND CONTROL

There are procedures promulgated under the statute to assure control and security of the product until the taxes are paid. Such procedures include proper classification of products for tax purposes, conformity with labeling requirements, and compliance with approved formulas. It is important for the Government to be able to distinguish wine-based products from products which contain distilled spirits due to the radically different tax rates on these products. For example, wine is taxed at as little as 17 cents per gallon, whereas products containing distilled spirits are taxed at $10.50 per proof gallon.

LABORATORY FACILITIES

Since these procedures require the sampling and laboratory analyses of a wide variety of products, it is essential that there be adequate laboratory facilities. Besides analyzing beverage/alcohol products, the laboratory also determines what alcohol products are nonbeverage in character and thus eligible for drawback of tax and checks the correct legal formulation of denatured alcohol. Essentially the laboratory insures that the product conforms to the proper standard of identity and to the labeled contents—again, to the benefit of the public and to the Government in revenue collection.

REGULATIONS

In addition to the many functions and requirements prescribed specifically by statute, there are several areas where the statute directs the Secretary to issue regulations. These regulations have the force of law, and compliance by industry is mandatory. Also, in a heavily regulated industry such as distilling with all its plant operations, situations arise which are not specifically covered by existing regulations. In these instances timely rulings and interpretations and procedures for amending regulations are essential to the industry and to the Government. There must be one agency with the expertise in place to make these timely responses so that plant and business operations can continue with a minimum of delay and interruption.

PERMITS FOR GASOHOL PRODUCTION

In recent years many permits, as was stated earlier—approximately 7,000—have been issued for the purpose of alcohol fuel—gasohol—production. This tremendous growth of legal alcohol producers, coupled with the recent dropoff in the gasohol market, could create an unfavorable situation for the beverage alcohol industry and lead to higher incidences of bootleg alcohol, particularly if there is also a lower level of alcohol enforcement.

ILLEGAL ALCOHOL PRODUCTION

Just recently an alcohol-fuel permit holder pleaded guilty to selling illegal, nontaxed moonshine liquor and was sentenced to 5 years in prison. In the mid-1950's, Federal and State Governments lost over $900 million on an estimated output of 72 million gallons of moonshine. In 1983, if only 10 percent of consumption was satisfied by illegal liquor, State and local governments could lose about $300 million and the Federal Government could lose roughly $750 million in tax revenues. Thus, the production of illegal alcohol could mean significant revenue losses at the Federal and State level and also could result in the distribution of a potentially poisonous product.

The statutory, regulatory and procedural requirements of the FAA Act greatly benefit the public at large. These requirements include provisions to (1) insure quality control and integrity of labels on beverage alcohol for the consumer; (2) maintain high standards for advertising; and (3) protect the public from misbranded, adulterated, shortfilled and illegally produced products.

Treasury must approve the label before a product can be sold. To do this, Treasury must know and in effect approve the contents of the product to insure that the product is accurately described by the label. As a result of these requirements, the consumers of beverage alcohol products are probably protected to a greater extent than the consumers of any other food or beverage product.

CHANGES IN FAA ACT

I do want to state that the distilled spirits industry generally is favorably disposed to some changes in the FAA Act. For example, we believe that the trade practice provisions of the act should be modified and in some cases eliminated in order to put the beverage alcohol industry on the same footing with other industries with respect to trade practices. Further, we would favor some changes in the permit provisions of the act which have already been suggested by Treasury. The distilled spirits industry as well as other segments of the beverage alcohol industry has been actively cooperating with the Treasury Department for over a year in an attempt to develop a modernized FAA Act. However, revisions should be accomplished by the legislative process. Simply making changes in the administration and enforcement of selected provisions of the FAA Act, which would have the effect of repealing vital parts of the act by a preemptive agency action, such as a funding reduction is unacceptable and unfair to the public and the industry and should be unacceptable to Congress.

OVERLAPPING REGULATORY FUNCTIONS

The alcohol beverage industry is currently governed by a highly interrelated body of laws and regulations. The technical areas such as supervision and control of the manufacturing process, of standards of identity and quality and construction of plants are highly integrated with the labeling, advertising, fraud prevention and unfair trade practices provisions. These overlapping functions require a high level of expertise and coordination in implementation and in making timely adjustments to meet changing conditions in the industry. These functions were integrated in 1940 in recognition of this fact and in the interest of management efficiency.

The distilled spirits industry urges that the administration of beverage/alcohol laws, regulations and rulings continue to be performed by one separate specialized unit. The need to protect this source of a great amount of Government revenue and to protect the public is best served by one cohesive unit having ready expertise in all aspects of the alcohol beverage industry laws and regulations.

Thank you again for this opportunity to testify. If you have any questions or desire more information, please don't hesitate to let me know. Thank you.

PREPARED STATEMENT

Senator **Abdnor**. Thank you, gentlemen, for your excellent testimony. The NABI prepared statement will be inserted in the record at this point.

[The information follows:]

NABI NATIONAL ASSOCIATION
OF BEVERAGE IMPORTERS, INC.

October 22, 1981

Honorable John M. Walker
Assistant Secretary for Enforcement
and Operations
Room 4508
Department of the Treasury
15th and Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Walker:

Thank you for the opportunity afforded in your letter of October 8, 1981, to present our views on the most cost beneficial placement within the Department of the Treasury of the organization and functions of the Bureau of Alcohol, Tobacco and Firearms. This response is based on the assumptions that a decision has been made to dismantle ATF and that options concerning the location of the alcohol regulation function are still open.

The Administration and the Treasury Department appear to have now underestimated the important role played by ATF in protecting the public interest and in insuring the collection of large amounts of Federal revenues. The Bureau is involved in such diverse activities as conducting negotiations with the European Economic Community for the removal of international trade barriers on the one hand, and to cooperating with industry public education programs on the other.

Among other important activities, ATF insures product integrity to the consumer through such operations as label review, formula approval, establishment of viticultural areas, and requirements for certificates of origin and identity. Also, the detection and elimination of serious unfair trade practices insures that competition is maintained in the marketplace. We believe the American public benefits from an orderly beverage alcohol market, particularly in view of the social sensitivity of the product and the large amounts of Federal and state tax revenues which are involved.

It is also a mistake to underestimate the social sensitivity of beverage alcohol. Concern over the social aspects is demonstrated by the myriad controls over the distribution and sale of the product at municipal, county, state, and Federal levels. This concern is further underlined by the fact that beverage alcohol is the only article which has been the subject of two Amendments to the United States Constitution. The social sensitivity of beverage alcohol requires that Federal regulation should be continued in appropriate areas.

In this connection, as you know, the industry is working with your office and ATF to draft a streamlined, modernized version of the Federal Alcohol Administration Act.

With that background, the position of the National Association of Beverage Importers in response to your question is as follows:

1. The regulatory functions performed by the Bureau of Alcohol, Tobacco and Firearms are as beneficial, if not more so, to the public as to the industry. Among these important functions are international trade negotiations, cooperation with industry public education programs, quality control, labeling, trade practices, data collection, and maintaining the integrity of imported products. We also believe that a continuing review should be made to identify and eliminate functions which are unnecessary or duplicative.

2. We strongly urge that, in the interest of efficiency in government, all those ATF functions relating to the beverage alcohol industry should be placed within a separate, independent organization within the Department of the Treasury.

3. The activities of a separate, independent organization performing alcohol regulatory functions should be funded from the general revenue. This posi-

tion is based on the fact that most, if not all, of these activities are in the interest of the public at large. In further support of this argument is the fact that beverage alcohol products yield over $12 billion per annum in Federal, state and local revenues, and that the industry performs an important tax collection role at both the Federal and state levels.

In view of the convincing arguments for funding Federal alcohol regulatory functions from the general revenue, we do not feel it is necessary at this time to respond to your questions concerning alternative financing methods.

Again, we thank you for this opportunity to express our views, and we look forward to discussing this matter with you and Secretary Regan.

Sincerely,

Rex D. Davis

Rex D. Davis
President

November 10, 1981

Honorable Donald T. Regan
Secretary of the Treasury
Department of the Treasury
15th and Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

This is in response to the invitation you extended to the beverage alcohol industry on October 27, 1981, to submit suggestions concerning the continuation of alcohol related functions currently being performed by the Bureau of Alcohol, Tobacco and Firearms. At the same meeting you stated that the decision has been made to dismantle ATF and to relocate its activities into other agencies.

In preparing its response, the National Association of Beverage Importers (NABI) used the alcohol regulation functions identified in an ATF budget proposal dated October 30, 1981. Our suggestions are based on the understanding that Treasury has established the policy that those functions relating to revenue collection and protection will be continued and funded from the general revenue.

Qualification: Some of the activities in this function relate to protection of the revenue while others are designed to insure that criminals do not enter the beverage alcohol industry and that persons who do enter will conduct their business in accordance with Federal and state laws. NABI believes that eliminating nonessential activities and other streamlining will result in a 50% reduction in workload in this function. We are convinced it is in the public interest to continue to function at a reduced level.

Labeling: The labeling function performed by ATF is important to the public interest because it insures product integrity and conveys important information to the consumer. Equally important and directly related to label approval is the formula approval activity. As in the case of the qualification function, the elimination of nonessential activities and the streamlining of operations will result in a 50% reduction of workload in this function.

Advertising: NABI has an Advertising Code as do the other beverage alcohol trade associations. While these voluntary codes are adhered to in large part, it is essential that some degree of government oversight be maintained to police the advertising activities of non-members and the occasional maverick. Under this system, a small group of advertising specialists would act on complaints from industry members or those that were self-generated. This type of operation will result in a 75% reduction of the workload in this function. We are firmly convinced that it is in the public's interest to continue to have government oversight of the advertising of this socially sensitive product.

Unfair Trade Practices: As you know, NABI and other industry associations are working with the Department of the Treasury to modernize the Federal Alcohol Administration Act and to eliminate unnecessary regulation. On the basis of current progress and in anticipation of a substantially revised FAA Act, we are of the opinion that the workload in this function can be reduced by 65%. Also, we feel it is in the public interest that certain unfair trade practices be policed by the Federal government. These trade practices will be identified during the course of our discussions on the amendment of the FAA Act. State regulation of the beverage alcohol industry makes it very difficult for free enterprise competitive restraints to operate as effectively as they do in other industries. For example, eighteen states exercise varying degrees of monopoly control over the distribution and sale of beverage alcohol products.

Statistics: The small size of this function does not correspond to the importance of its output. Obviously, the beverage alcohol industry relies heavily on these statistics for economic planning purposes. But the statistics are also important to many other businesses — examples are firms which supply containers and raw materials; shippers; market analysts and securities dealers. We believe it is in the interest of the economic welfare of the country to continue this function at its present level.

International Trade: While we recognize the contribution made to free trade through ATF's international negotiations, we suggest that this function be performed by an agency that is routinely involved in international trade negotiations. Organizations of this type include the Office of the Trade Representative, United States Customs Service, and the Department of Agriculture.

Investigations: We understand that this function involves illicit liquor violations and is, therefore, revenue related.

Counsel: Since most of our suggestions would result in a 50% reduction in workload, we anticipate that there would be a corresponding 50% reduction in the Counsel's workload.

Laboratory: NABI recommends that the ATF laboratory be consolidated with the laboratory of the United States Customs Service, with an anticipated minimum reduction of 20% in funds required by this function.

Operating Costs: Since NABI's suggestions will result in an overall 50% reduction of non-revenue related workload, it is reasonable to anticipate that there will be a corresponding 50% reduction in operating costs. For your ready information, we are enclosing a revised budget proposal to maintain alcohol regulation functions based on the above NABI recommendations.

As we have pointed out above, there is a strong public interest in those functions which we have recommended for continuation. We are convinced that the sharply reduced workload level at which these activities will be performed will protect that public interest without being unduly burdensome to the taxpayer. In view of this, we feel strongly that these functions should be funded from the general revenue.

We appreciate the opportunity to make our views known to the Department of the Treasury on this important issue. Please do not hesitate to call on us for any additional information you may require.

Sincerely,

Rex D. Davis

Rex D. Davis
President

NABI PROPOSAL FOR BUDGET TO MAINTAIN ALCOHOL REGULATION FUNCTIONS

Function	Amount
Qualification	$2,295,642
Revenue	$13,889,356
Market Standards & Practices:	
Labeling	$2,050,196
Advertising	$231,008
Unfair Trade Practices	$818,635
Statistics	$346,512
International Trade	-0-
Investigations	$404,264
Counsel	$332,074
Laboratory	$693,024
TOTALS (personnel)	$21,060,711
Operating Costs	$4,547,584
GRAND TOTAL	$25,608,295

November 10, 1981

EFFECT OF PERSONNEL DROP ON ENFORCEMENT

Senator **Abdnor**. I would like to open up the questions with a lengthy article that appeared in the Washington Post just this morning on this very subject, the BATF. If I could just read one paragraph here, I would like to ask you to comment on it.

It says:

> The administration wants to abolish the Treasury Department's Bureau of Alcohol, Tobacco and Firearms and transfer alcoholic beverage regulations to the Customs Service. While the number of employees performing BATF's old job would drop about one-fourth, the number of staffers who would enforce Federal alcohol regulations would drop by 75 percent, from 400 to 100. "Our intention is to have a minimal amount of compliance with the Federal Alcohol Administration Act," says Robert Hollis, Deputy Assistant Treasury Secretary of Enforcement.

What does that do to enforcement, do you think, the drop of 400 to 100?

Mr. **Norvell**. Senator, I would like to answer the question, if I may.

To me, it would just leave everything open. On my particular end as a distributor, we have a significant market share in the city of Las Vegas. With absolutely no controls put on myself, and I like to think I would possibly live with the FAA Act even if there wasn't an agency, but my heart tells me I probably wouldn't. I could sit down and in all honesty you could sit down and run the small distributor out of business if you wanted to. You could move his products off the shelf, which right now we are not allowed to do. We are allowed to move our own products on the grocery store shelves, that sort of thing. If there were absolutely no agents to control it, we could sit down and move his products to the bottom where the consumer could never see it, and it would just be an open market where the large would get larger and the weak would go out of business.

Right now if that is done, any distributors in our market have the option of calling the BATF. They will send enforcement agents in and make sure that that is stopped. That practice was done by one of my competitors approximately a year ago. I called the BATF. They came in and within a week they had the practice of this gentleman ceased to do that.

BATF PERSONNEL CUTS

Senator **Abdnor**. Mr. Norvell, would you say you don't feel that the present staff with the BATF is at all bloated, that any kind of a cut would be harmful, or do you think in this period of time that maybe——

Mr. **Norvell**. I am not aware of the particular administration of the BATF and possibly if there would be any fat in that. As far as agents, when we have a complaint as a distributor, it has to be acted upon I feel immediately. Right now it is probably a week to 10 days once we make a phone call that we can have an agent in the market and sit down and talk to him about the particular complaint. He can talk to the competitor that possibly might be violating the FAA Act and get the problem solved within 2 weeks.

FEAR OF INDUSTRY DOMINATION BY CRIMINAL ELEMENT

Senator **Abdnor**. Let me take the next paragraph for a comment.

> The Department's officials dismissed the liquor suppliers concerns. "That is utter nonsense," said one of the officials involved in the issue. "There was a greater threat in earlier times that the industry might be dominated by the criminal element. I don't think that is a threat today." He added that the regulation imposed by the Alcohol Administration Act is excessive.

Does anyone care to comment on that?

Mr. **Cleary**. On that point, I think in the brewing industry we don't have that problem. But getting back to the original point, none of us here are prepared to say what is the correct number of administrative people needed in the agency. But certainly a curtailment of going from 400 to 100 in terms of enforcement seems like a very drastic reduction.

BATF COMMITMENT TO CONSUMERS

Mr. **Fuller**. Mr. Chairman, I agree with Russell that it is a situation where we see the industry at the street level. We don't really know exactly if you cut 10 people or 100 people or 1,000 people, or whatever the number of cuts may be, how they affect the enforcement upon us. But what really concerns the wine industry and myself personally, as well as the Oregon wine industry, is I have been in the wine industry for 24 years, both in California and Oregon, and I have seen the BATF go from almost an exclusive revenue protection agency to an agency that has had a strong commitment to consumerism. I think that besides protecting the revenue they have made a strong commitment to protecting the consuming public.

This has given the wine industry somewhat of a white hat image in the eyes of the wine consumer, because of this consumer protection approach that the BATF has taken.

I think without the enforcement there will be a total lack of consistency of product identity and integrity, and that if this happens, it will threaten our industry immensely. Right now we have labeling regulations, that we have to guarantee that the product meets certain regulations. These labels are submitted to the BATF. They are approved here in Washington. But also that agent that is in the field will visit our premise on a regular basis and will go through our label approval files and identify our records in terms of the grapes that went into that particular tank of wine which subsequently was put in a bottle and had a label put on it.

I think the consuming public is well aware of this role that the BATF plays. It is not something that is just out there hidden. There are many industries that are regulated by the Government that the public isn't even aware of these things happening. But we in the industry are proud of this protection that the consumer is getting. So, therefore, we have made a big issue of this. We have gone to the public and said, "Look, we have met these particular requirements."

We also as an industry in the last couple of years have strengthened these requirements. We have not just accepted the so-called median level of compliance. We have asked the BATF to strengthen them, to go from 51 percent in grape content in a particularly labeled variety of wine to a 75-percent requirement. So we have actually tried to make the consumer aware we are looking out for our interests and that the BATF is protecting them in terms of these standards of identity.

Thank you.

Senator **Abdnor**. Senator Cannon I think has some questions.

Senator **Cannon**. Thank you, Mr. Chairman.

WITNESSES CONTACTED BY TREASURY DEPARTMENT

Earlier this morning the chairman said that the issue here today was whether or not this subcommittee could hold hearings without the witnesses before the committee being contacted by officials of the Department of the Treasury. The chairman also said that on Friday officials of the Treasury Department began to telephone individuals on the witness list. He was not certain as to what the purpose of those telephone calls was.

Mr. Norvell, were you contacted by any official of Treasury in that regard?

Mr. **Norvell**. Yes, Senator. I was contacted by a Mr. Simpson. I don't know what his exact official title is with the Treasury Department. He wanted to know I guess basically what my testimony would be and also that if they fought to have the $15 million put in to more or less control or supervise the FAA Act as far as enforcement is concerned would I more or less be in favor of the BATF going into the Treasury Department. He apparently was concerned about exactly what was going to be said today. I think that was a compromise offer, that if they would use that $15 million for the FAA Act as far as enforcement is concerned, would we tone down our testimony.

Senator **Cannon**. Had you had any contact with this gentleman or anyone from Treasury before?

Mr. **Norvell**. No, sir.

Senator **Cannon**. The contact came as a result of a telephone call to you, to your office?

Mr. **Norvell**. Yes. I called my office from the Washington airport here when I arrived Friday. The call was there. So from the airport I returned the call. I didn't know in what capacity with the Government he was, other than he was with the Treasury Department. I got ahold of him about 5:30 Friday afternoon.

Senator **Cannon**. Did this contact influence you at all in the testimony that you presented here to the committee?

Mr. **Norvell**. No, sir, it didn't. But it is of grave concern because I have a Federal basic permit. Without that basic permit I am out of business. It is very possible that the Treasury Department would be the one that would be issuing those permits. So obviously there is some concern when you do get a call regarding your testimony.

Senator **Cannon**. Did this factor make you uneasy about your appearance here today?

Mr. **Norvell**. Yes, sir, it made me very uneasy.

Senator **Cannon**. Thank you, Mr. Chairman.

Senator **Abdnor**. Thank you.

Senator Proxmire, before I call on you, one of our panel participants arrived late and maybe we should hear from Mr. O'Brien first.

Senator **Proxmire**. Fine.

Senator **Abdnor**. Mr. O'Brien, you are with the International Federation of Wine and Spirits, New York.

INTERNATIONAL FEDERATION OF WINE AND SPIRITS

STATEMENT OF E. VINCENT O'BRIEN, INTERNATIONAL FEDERATION OF WINE AND SPIRITS, NEW YORK

Mr. **O'Brien**. That is right, Senator.

Senator **Abdnor**. Go right ahead.

Mr. **O'Brien**. I apologize for the delay in arrival. I was having the presentation typed this morning. I was out of town last week.

First, so you might know my background, I am a practicing attorney in the wine spirits area. Let me say first that I am not going to read my statement. Rather, I would prefer to try to explain to you the highlights and the most significant points rather than reading it. I think you can read it for yourself at your leisure.

PREPARED STATEMENT

Senator **Abdnor**. Mr. O'Brien, I assure you your entire statement will be printed in the record.

Mr. **O'Brien**. Fine.

[The information follows:]

E. VINCENT O'BRIEN

FEDERATION INTERNATIONALE DES VINS ET SPIRITEUX

SUMMARY STATEMENT

The Federation Internationale, on behalf of trade association members of 22 countries, urge that the functions and personnel of the present BATF dealing with the alcoholic beverage industry be maintained as a separate unit.

This position is being urged upon you because of the significant work being done by Bureau personnel in the important area of international trade. The Bureau has, and continues, on behalf of free trade to work toward the elimination of non-tariff trade barriers thus facilitating increased exports for American products. The Bureau also has protected the integrity of imported merchandise in the interests of consumers and the alcoholic beverage industry.

All of these significant activities of the Bureau are interrelated and necessitate the continued existence of the Alcoholic Tax Unit as a separate entity.

PREPARED STATEMENT

The Federation Internationale is the largest wine and spirits trade association in the world representing as it does all of the major wine and spirits trade associations from approximately 22 countries all over the world. More importantly, those countries represent virtually of the major worldwide producers of wines and spirits. We are here to tell you and the Administration about a face of the BATF that is not generally known; probably because of the Bureau's own quiet efficiency. I am referring, as you might suspect, to the activities of the BATF in the international arena of wine and spirits trade. In this regard, the Bureau is perhaps its own worse enemy since it has done its job so effectively, so efficiently and so quietly that few are even aware of their international presence.

Let me be more specific. The two major markets for wines and spirits in the world are the U.S. and the European Economic Community.

No other countries come close to matching these two markets in significance. Until just a few years ago, the trade between these two great markets was virtually all one way. That is, the overwhelming majority of all U.S. imports have come from EEC countries. The converse was, and is not, the case. Virtually no significant EEC wine and spirts imports have historically originated from the U.S. For example, as recently as three years ago, both Australia and Argentina shipped substantially more wine to the EEC than did the U.S. And yet, in taste test after taste test, U.S. California wines have won gold medal after gold medal throughout Europe in head to head competition with the best that Europe has had to offer.

What then has been the problem? Plainly and simply, the problem was one of tariff and non-tariff trade barriers. The EEC market has been virtually inaccessible to U.S. wine and spirit products because of discriminatory taxes and duties, paperwork barriers, discriminatory labeling requirements, discriminatory advertising prohibitions, discriminatory custom procedures and the like.

The Federation Internationale was formed, and it continues to exist, on the basic premise of free trade in the international wine and spirits marketplace. The Federation found the European barriers to U.S. products to be both embarrassing and of questionable legality. Standing as it does for free trade, the Federation authorized the U.S. delegation several years ago to enlist the support of the BATF in direct face to face consultations with EEC regulatory officials. The results have been dramatic to say the least. For the first time, American wine and spirits products can now be found in virtually every major capital of Europe, and they have begun to enter retail channels of distribution in large quantities.

How did the BATF accomplish so much in so little time and exactly what has it accomplished? They did it, Ladies and Gentlemen, through their expertise, through diplomacy and through perseverance. Their expertise in the wine and spirits production area so impressed their European contemporaries that they simply had to be taken seriously. The Bureau, through its executive and supervisory personnel, are foremost authorities in the extremely complex arts of distilling and wine making. As knowledgeable as they are however, throughout this project, the Bureau has sought and accepted technical input from industry and university experts. The resulting sophistication and depth of knowledge displayed by the BATF in these consultations earned and even commanded the respect of their European counterparts. Furthermore, they did it in a dignified, diplomatic manner, not as pushy bureaucrats. They had a good story to tell. They told it well and they persevered until they achieved their objectives.

It use to be that American wines and spirits were blocked from EEC entry because they either: a) were not considered to be produced in accordance with European technical standards; b) no appellations, vintages or varietal designations were generally recognized for U.S. products; c) U.S. products were subjected to stricter and constantly changing label requirements; d) alcoholic content and proof requirements were established in a manner discriminatory to U.S. products; e) finally, and perhaps most effectively, (from a discriminatory point of view), paperwork procedures were established requiring U.S. Government certification that products imported into the EEC from the U.S. were produced according to European production methods; a certification the Europeans knew our Government could not give.

These, and similar tactics, were utilized constantly against the few brave American producers who decided to gamble on shipments to Europe. The usual fate was that the products would be impounded as unacceptable and the shipper would be out-of-pocket for the entire value of his shipment. Enough shippers were burned in this manner to severely depress U.S. exports with the rare exception of American bourbon to West Germany and one or two other markets.

ATF began its long uphill battle by inviting EEC officials to study U.S. production methods and processes and asking for permission for itself to do the same. This process, together with periodic progress and consultation sessions began to bear fruit. In the wine area for example, of approximately 112 intermediate steps identified in the enological or wine making process, BATF and the EEC have reached harmonization, agreement and common definitions for all but 4 or 5. Furthermore, the Bureau has attained recognition for U.S. definitions of viticultural areas, varietals, vintage dating, and estate bottled. All EEC countries are now required to admit and accept, subject to the above noted certification requirements, 264 American viticultural designations as established by the BATF through the public hearing process. All of the Bureau's accomplishments emanate from the credibility that the BATF has earned in Brussels. EEC officials know that the Bureau's knowledge, coupled with its uncompromising record of enforcement, assures compliance with mutually agreed upon standards of quality and performance.

BATF conducts these consultations as part of an international U.S. Government task force also involving the Office the Trade Representative, the State Department, the Department of Agriculture, U.S. Customs and the Commerce Department. I think it is significant that ATF and Treasury took the initiative and played the lead role in this all important interagency committee. The most significant point of all is that this leadership is based on expertise alone.

I might add that this international reputation of the Bureau mirrors the excellence with which it also performs its domestic functions. The Bureau collected approximately 8.5 billion dollars in excise taxes from industry in 1981 with a total operating budget of approximately $150,000,000. That is quite cost efficient; particularly when you consider that the same operating budget also covers such diverse functions as enforcing the laws against moonshine whiskey, enforcing trade practice and production rules and regulations, investigating applicants for Federal permits to bar those with criminal backgrounds, holding public hearings on proposed rule changes such as the new improved domestic wine regulations and so forth. All and all, an enormous agenda of responsibilities very well performed.

You should also be aware that, on the import side, ATF acts to safeguard American consumers against what could otherwise be a deluge of fraudulent, mislabeled and misrepresented products. Through its vigorously maintained standards of identity, label and formula approval systems and international surveillance activities, the BATF protects both consumers and the import trade alike. For example, in cooperation with European law enforcement officials, the ATF recently uncovered a major, intended fraud involving a popular French wine, Pouilly Fuisse. Unscrupulous traders in Belgium and Holland took ordinary white French table wine that would normally sell for $3.00 a bottle and relabeled it for shipment to the U.S. as $20 a bottle Pouilly Fuisse. Tens of thousands of bottles were confiscated before they ever reached the U.S. trade or the consumer thanks to the vigliance of the BATF. Likewise, they constantly prevent "cheater bottles" which do not meet Federal standards of fill, mislabeled products which imply country of origin other than the true one, bottles that purport to be estate bottled or vintages and the like. They also test imported spirits and cordials to ensure the accuracy of alcoholic content and to be certain that only FDA approved additives and ingredients are utilized.

While the Bureau's accomplishments in the International area are impressive, a great deal more would already have been achieved had the reorganization issue not surfaced last September.

Let me explain. High level year long 1981 negotiations between senior EEC and BATF officials were to have culminated last October in the following anticipated results:

1. The remaining half-dozen disparities in enological (or wine making) practices were expected to be permanently removed either by harmonization or by derogation. This would have been truly significant since the BATF could, for the first time, certify that U.S. wines are produced in accordance with European enological

practices. In return, the EEC was prepared to order its member countries to admit wines bearing such certifications without quotas or restrictions. The implications for potential U.S. exports are enormous.

2. To date, fraud investigations, such as the Pouilly Fuisse scandal noted above, have been handled on an ad hoc and informal basis. Although the BATF and the EEC deserve much credit for initiating such cooperative efforts, the lack of formal procedures and protocol have no doubt enabled many lesser frauds to slip through the net. Significantly, during 1981 the EEC actually modified its regulations in anticipation of reaching formal agreement with the BATF at the scheduled October meetings. Surely this would have been desirable from the points of view of both the consumer and the trade.

3. The most common European non-tariff barrier against U.S. wine and spirits products is the label itself. As noted above, Europeans have required certain unique label provisions for U.S. products only. Not only do the Europeans exempt themselves from these requirements, but many countries promulgate different rules so a separate label is required for each. Furthermore, these nit-picking barriers, and that's exactly what they are, are changed frequently to make compliance even more difficult, if not impossible.

To solve this problem for U.S. producers, the BATF has been negotiating for the adoption of universal wine and spirits labels with specified designations for mandatory and optional information. Any wine or spirits product bearing such an approved universal label would have total free access throughout all EEC and U.S. member states.

Worthwile projects? You bet! And the sad part is that all would have been either completely or substantially accomplished last October if the BATF had not been "put on the shelf" last Fall and ordered to cease its "expensive" international activities. I agree that these activities have been expensive -- but not in terms of costs to taxpayers -- rather, expensive in terms of lost exports, loss of corresponding favorable balance of payments and lost jobs in our economy here at home. Clearly deregulation impedes rather than enhances free trade at the International level.

How do I know that BATF was on the verge of these accomplishments? Because I have personally heard the most senior EEC wine and spirits regulatory officials lament the break in negotiations publicly at two Federation Internationale conferences in Milan last November and in Brussels just weeks ago. Privately those same officials wondered aloud in amazement at how our government could unilaterally retreat from negotiations that were on the verge of achieving results primarily benefitting the United States. They expressed disappointment and questioned the sincerity of the U.S. in having initiated such bilateral talks in the first place.

A sad situation indeed! What a slap in the face of those BATF officials who have labored so long and hard in pursuit of these worthy goals.

I might add that the Bureau has also had significant success in solving problems internationally on a country by country basis. Had it not been for the intervention of the BATF during 1981, no U.S.produced bourbon could have been exported to Italy after January 1st of this year.

Where do we go from here? Do we simply dissolve the Bureau or allow it to be absorbed into another Agency? Absorption is not much different than abolition in my opinion unless the personnel and their jurisdiction are kept intact as a separate division or entity. Failing that, or maintaining the status quo as a separate Division of Treasury, I will conclude by predicting the following:

1. U.S. exports of wine and spirits products will virtually cease; no U.S. government agency will possess the expertise, the regulatory framework, or the inspection systems necessary to ensure integrity of U.S. products. European barriers will return, the U.S. balance of payments will suffer, and additional jobs will be lost at home.

2. U.S. production and sales of wine and spirits will fall dramtically as the result of a flood of cheap, mislabeled, and fraudulent products -- including some with a petroleum alcohol base. Legitimate U.S. producers will be unable to compete with this deluge of questionable products and many U.S. distilleries and wineries will close with further enormous losses of jobs and new drains on our welfare systems.

3. Unscrupulous producers will turn out large quantities of doctored or mislabeled products since the Government will no longer possess the laboratory or regulatory expertise to ensure product integrity.

4. By being penny-wise and pound-foolish, budget savings of a few million dollars (the total BATF budget has already been cut by 25% in the past year) will jeopardize a large percentage of the 8.5 billion dollars in excise tax revenue generated by the Industry. What a bad decision from a business point of view.

What you have to realize is that the fat has long since been removed from the Bureau. BATF and Industry have pursued deregulation for the past three to four years with a great deal of vigor. As a result, BATF has achieved very significant man-hour reductions -- particularly in production areas -- and many outdated and costly regulations have been modernized, streamlined or dropped altogether. Deregulation has already been substantially accomplished in this Industry.

5. Without trade practice enforcement and regulatory supervision, many additional distilleries, wineries, and distributorships will close with resulting additional losses of jobs and more welfare drain. The potential for restraint of trade violations will significantly increase.

6. We will see a moonshine problem unlike anything the country has ever seen before -- it will dwarf the problems experienced during Prohibition. Recall, if you will, the mass of epidemics of blindness and alcohol poisoning experienced during Prohibition. The U.S. Government will bear the cost of these health problems.

7. Ultimately, public pressure will require the U.S. Congress to re-invent the BATF. Unfortunately though, it will be a tremendous inefficient, costly and time-consuming effort since

virtually all past expertise and experience will have been lost and you will have to start from scratch.

Gentlemen, I urge you to prevent the absorption or dissolution of what may well be your most efficient and cost-effective public protection and revenue producing Agency.

PERSONAL BACKGROUND

Mr. O'Brien. My own personal background is I am an attorney practicing in the wine and spirits and beverage alcohol area for the past 20 years, 5 years with a Wall Street law firm that represented two of the five largest wineries and distilleries in the country, 12 years as general counsel and vice president of the largest producer of wines and spirits in the world, and the last 3 years as a partner in a law firm that specializes in wine and spirits matters.

The Federation Internationale, on whose behalf I am appearing this morning, is a trade association of trade associations. The Federation Internationale represents the major wine, spirit and beverage alcohol producing trade associations in the 22 largest beverage alcohol-producing countries in the world. The United States is obviously one of those. The U.S. delegation consists of the Distilled Spirits Council of the United States, the Wine Institute, National Association of Beverage Importers, the California Brandy Advisory Board, and the American Beverage Alcohol Association. I am part of the American delegation as counsel and secretary to the American Beverage Alcohol Association.

WORLDWIDE CONCERN FOR BATF

The Federation Internationale, in a meeting in Brussels just 2 weeks ago, passed a resolution urging our appearance at these hearings to convey to you their concern, their worldwide concern, about the future of the BATF and the question of the reorganization.

ALCOHOL CONSUMING MARKETS

I would like to point out that the United States and the EEC for all practical purposes constitute the world markets of wines and spirits. The Federation Internationale contains associations from each of the EEC member countries. So the Federation Internationale is most importantly a U.S. and European association of trade associations.

The United States and the EEC constitute by far the largest consuming market of wines and spirits in the world. There is no other market that even comes close to either the United States or the EEC.

However, significantly, from our point of view, all of the trade in the import and export of wines and spirits has been one way. Since the repeal of prohibition, the United States has never significantly exported any amount to the EEC or the 10 member States that comprise the Economic Community. There is a reason for that one-way trade. There historically have been tariff and nontariff trade barriers against the United States for the exportation of its wines and spirits products to Europe.

I would like to point out that the EEC, most people assume, is the largest exporter of wines in the world and that they probably import very little. The contrary is true. The EEC imports 70 percent of the wines consumed in Europe. Of that 70 percent of the imports, the United States supplies less than one-half of 1 percent of that 70 percent. Just to dramatize for you how little export of

U.S. merchandise there is to Europe, California wines year after year consistently win gold medals throughout Europe when compared with blind taste testing with the best Europen has to offer. Yet Argentina and Australia outsell the United States in terms of imports into the EEC.

TRADE BARRIERS HURT U.S. GROWERS

Something is radically wrong. These tariff and nontariff trade barriers have been an absolute block to U.S. products.

Several years ago, about 4 or 5 years ago, the Federation Internationale, which has as one of its basic constitutional principles free trade, free trade internationally, expressed embarrassment at one of its annual conferences about the situation where Europe was precluding the admission of the U.S. products. They suggested that they would support an effort by the U.S. delegation to enlist the aid of the BATF to try to do something about its problem.

The BATF was contacted. The BATF gave tremendous support. They have had an uphill battle, though, from the very beginning because, as you might imagine, the Europeans tend to think that they have a monopoly on the skills required for making wines and spirits. They have not allowed our products in and they were not prone to accept our technical skills. BATF launched a major study and they enlisted the technical support of the industry through the Wine Institute. They enlisted the universities of California that are among the finest in the world on enological processes and wine studies and through this background began to initiate a series of discussions with the EEC regulatory officials in charge of wine and spirits.

The Bureau and the EEC, through Bureau initiative primarily, suggested a joint study of enological practices. The BATF said, "You come to the United States, look at the way we make wine, we will study the way you make wine, and let's see if we can't adopt uniform standards, uniform methods of production." The EEC and the BATF together identified 112 distinct processes in the creation of wine. Through negotiation, over a period of a couple of years, they managed to harmonize all but 4 or 5 of those 112 processes.

Now, that has extreme significance because one of the major barriers utilized against U.S. wines was a requirement that the U.S. Government through the BATF certify that our wines are made in accordance with European standards of production. And failing that certification, our wines would not be allowed into Europe.

Now, the Europeans knew that because of some of the unique definitions they had there was no way that our U.S. producing companies could meet those standards or that they would be made the same way and, therefore, the BATF could not honestly give certifications allowing our goods to go overseas. By harmonizing the standards, by saying "Look, we do the same thing to the wine, no matter what we call it, we both clarify, we both stabilize, and so forth," the Bureau was able to get the EEC to adopt common definitions which would allow for the certification of our products for export to Europe.

U.S. WINE NOW ON EUROPEAN MARKETS

During these negotiations, the last couple of years, because they proceeded smoothly, the EEC has granted limited exemptions to U.S. producers and exporters. So we have had the ability to export some minimal amounts during the past couple of years while these negotiations have progressed. Now for the first time if you travel through European capitals you are likely to find California wines in virtually all of them—not in large quantities, but they are there. It is a foot in the door.

This has tremendous implications for the industry, for the Government in terms of balance of payments and in terms of employment.

This progress was a direct result of the ATF's credibility in the eyes of the European officials. They earned that respect and they demonstrated because of their knowledge, because of their enforcement, because of their supervision, because of their regulatory framework, that they were able to protect the integrity of American products to the satisfaction of the European officials.

IMPORTS AND DOMESTIC MERCHANDISE

I might point out that the BATF also performs a number of these functions in the Uunited States with regard to imports and domestic merchandise. I am not going to repeat the statements of the panel, but simply to highlight for you that the BATF through formula approvals, alcohol content checks, ingredient checks against approved FDA standards and so forth, label approvals, has seen to it that mandatory immediate requirements are met, standards of identity, surveillance of plants, and so forth, to insure the integrity of our products. They protect the public and the trade from mislabeled, bogus or otherwise unacceptable merchandise. For example, let me describe to you a scandal that you may have heard of in the last year or two.

One of the most popular French wines in the United States is Pouilly Fuisse. Because of that popularity, the price has roughly tripled or quadrupled in the last couple of years. A group of unscrupulous traders in Belgium and Holland acquired vast amounts of ordinary French table wine, doctored it in Holland, relabeled and rebottled it and shipped it to the United States as Pouilly Fuisse. Tens of thousands of these bottles were impounded before they ever reached the consumer in the United States because of the vigilance of the BATF.

I would like to point out that had there been no BATF, there is no State in this country that would have had the ability, the testing facilities or the inclination or the responsibility to have caught this scandal or this fraud on the public and on the trade. I might add, the American trade was victimized as well as the American consumer. Without the BATF surveillance, those tens of thousands of bottles of ordinary French country wine would have sold at some $20 a bottle instead of the $2 or $3 a bottle that they were worth.

PROTECTION AGAINST MOONSHINE PRODUCTION

Also, the BATF protects against the production of moonshine. They are the ones who have the responsibility to prevent illicit production, to shut down illicit stills. This problem has been totally under control in the past but has begun to create concern because of the relative ease in securing permits to operate gasohol stills. The growth of gasohol stills raises a clear concern for the future of the moonshine problem. Without a BATF, I shudder to think of what would happen to the potential of this problem.

BATF also keeps out the criminal element because of background checks for Federal permits, and they also, as you heard earlier, enforce trade practice provisions, rulemaking provisions, and so forth.

Now let me get to the second half of my comments which relate to the reorganization of the BATF.

Senator ABDNOR. Mr. O'Brien, I just have to say I am 25 minutes behind. We have some questions, so if you could summarize.

Mr. O'BRIEN. I will be done in less than 5 minutes.

Senator ABDNOR. All right.

Mr. O'BRIEN. Instead of second half, I should have said the last one-quarter.

RESULTS OF MEETING PROPOSED BETWEEN BATF AND EEC

The reorganization of the BATF has thrown a monkey wrench into the EEC negotiations. There was a major negotiating session scheduled for the EEC for last October. That meeting was expected to produce the following results.

First, the enological practices that I described earlier, the harmonization procedure, were expected to have resulted in the final harmonization of those last four or five issues or, in the alternative, a derogation granted by the EEC, either of which would have permitted complete access to U.S. wines.

Second, the fraud procedures that unveiled the Pouilly Fuisse scandal so far have been ad hoc and informal. The BATF and EEC have done that somewhat on their own, and they were scheduled to adopt formal procedures and protocols at the October meeting that would have formalized and made less likely the possibility of future frauds or scandals involving mislabeled products.

Third, the nontariff trade barriers, the labeling requirements, many of the European countries will put out specific requirements on their label, different from each other, that they are exempt from but the United States must follow, simply as a means of keeping our products from getting into that country. The BATF last October was to have achieved or substantially achieved agreement on a universal label that would have allowed any European wine containing that label into the United States and any U.S. wine containing that label into Europe. And by universal I mean the same kind of mandatory information listed in the same fashion, same type size, and so forth.

The Treasury allegedly stopped those negotiations with the EEC because they felt the international activities were expensive. I agree they are expensive, but they are not expensive because of cost to the taxpayer. They are expensive because of their cost to the trade and to the Government in lost jobs, lost exports, balance of payments. In this area, deregulation impedes rather than enhances free trade.

How do I know that the Bureau was this close to achieving these results and how do I know that the EEC officials were as concerned as I have said they were? Because the EEC officials themselves at the highest level have publicly broken negotiations in the Brussels meeting just 2 weeks ago with the Federation Internationale. Privately they have wondered how the United States could possibly abandon negotiations that were about to result in primary benefits to the United States. It caused them to question the initial sincerity of the United States in having started these bilateral talks.

PREDICTIONS IF BATF ABOLISHED

Where do we go from here? Do we abolish or absorb the BATF? In my opinion, to absorb is the same as abolish, unless you preserve the people and the jurisdictions in a separate fashion, in some separate entity or division at the very least, or maintain the status quo. If you don't, I predict the following. I will conclude with these predictions.

No. 1, U.S. exports will virtually cease. We will have no product integrity. Our reputation for product integrity that the Bureau has so carefully built these past few years will disappear. We will go right back to square one, less than one-half of that 1 percent of that 70 percent of the imports into the EEC.

No. 2, U.S. domestic production will fall sharply. There will be a flood of mislabeled and bogus goods, including petroleum based alcohol beverage products coming into the United States without the surveillance of the BATF.

No. 3, unscrupulous producers will turn out mislabeled or doctored goods in an effort to compete with the European flood. There will be no likelihood of detection, to the detriment of the good producers, because there will be no labs or BATF expertise to detect the difference.

No. 4, by being penny-wise and pound-foolish to save perhaps a million or a few million dollars with the BATF, we will jeopardize $7.5 billion—I am sorry; the number is now up to $8.5 billion for 1981—in excise tax revenue.

This is not a fat agency. The BATF, with cooperation from industry, has gone through a substantial deregulation the past 3 to 4 years. Prior to last year, the Bureau had eliminated enormous numbers of man-hours because of deregulation, primarily in the production area, and after that project was completed the Bureau took a 25 percent budget cut last year on top of the deregulation already in place. We are talking about an organization that has already gone through deregulation.

No. 5, without trade practice enforcement, we will lose distilleries, wineries, and distributorships. The strain of trade violations will increase.

No. 6, we will see the moonshine problem rise to an extent that we have never seen before. Recall, if you will, the epidemics of blindness and alcoholic poisoning during prohibition. The U.S. Government will bear the cost of this health problem.

No. 7 and finally, ultimately, gentlemen, you will have to reinvent the BATF. The problem is that you will have to do it after they are gone, and that will be costly, time-consuming, because you will have lost the experience and the past expertise of the Bureau that they have built through these past 40 years.

I urge you to prevent the absorption or the dissolution of what may well be your most efficient and cost-effective public protection and revenue-producing agency. Thank you.

Senator **Abdnor**. Thank you, Mr. O'Brien.

Senator Proxmire?

GENERAL QUESTIONING

Senator **Proxmire**. Gentlemen, I want to congratulate all of you for a very impressive presentation. Frankly, it has to be impressive because as you know, this committee is very concerned with appropriations and spending, as the whole country is and the President of the United States is. We have to do all we can to cut spending and appropriations wherever we possibly can. The presumption has to be on the side of those who would maintain the level of spending, particularly when the administration makes a clearcut recommendation to make cutbacks.

I favored abolishing the Education Department, the Energy Department, any other department I can find, and it is tempting when they say they can cut an agency from 400 people to 100. I think we have to make a strong case, and I think you have made a very impressive case. But I would like to ask Mr. Cleary about the point you make on page 2. The Treasury people say that the industry has cleaned itself up and that the need for the kind of BATF regulation that we have had in the past was maybe necessary in the past but not at the present.

MAJOR BREWERS

Now on page 2 you have a list, which I am sure you didn't like to produce to us, but I think it is quite impressive. You say,

> Two top brewers at that time paid offers in compromise of over three-quarters of a million dollars each to the BATF for violation of the trade practice rules. Several regional breweries also paid offers in compromise of lesser sums of money, and there was also a Grand Jury investigation of another major brewer. These offers in compromise resulted from a very thorough and complete investigation by the BATF.

Those are recent, in the last 6 or 7 years.

I take it from your testimony you feel that that kind of supervision must continue and if it does not continue that you are going to have violations of the trade practices that will be quite wholesale. Is that right?

Mr. **Cleary**. Yes, I would agree. Certainly the efforts in the BATF have vastly improved the industry in terms of payroll, kickback, and otherwise. If nobody is there enforcing the law, we could walk right back into the swamp and the public scandal and the ill-will that would be generated toward our industry would be very damaging. I think the BATF has done an excellent job in this area. It is certainly an area we shouldn't just let go by default.

DISBANDING BATF INEFFICIENT

Senator **Proxmire**. They argue they would simply transfer the functioning of the BATF to other agencies—Commerce, Customs, and so forth. Do you feel that they simply couldn't do the job BATF does?

Mr. **Cleary**. I think again the comment of the last gentleman, you have an agency in place with people who have vast years of experience in handling these matters of labeling or trade practice regulations. To dissemble that group would be a disaster, and probably you would wind up trying to reassemble it a couple years from now, with I think disastrous results.

Senator **Proxmire**. Then I think on page 2 you make a pretty impressive rebuttal of their argument, that the industry itself is very competitive, when you say your statement is based on the fact that "10 years ago the two top brewers had 30 percent of the total beer sales; 5 years ago the top two brewers had 40 percent, and now the top two brewers have 55 percent or more of all domestic beer sales in the United States."

You talk about a growing concentration and a problem in competition. You have done a great job, I think, in bringing on more competition in the industry, as we all know. But still, it can hardly be said that competition is going to take care of the situation. Isn't that right?

Mr. **Cleary**. The point I tried to make here is we have today a great economic imbalance between the two largest brewers and the rest of us. There is a huge gap between one and two and the rest of the industry.

Senator **Proxmire**. The next biggest after the two biggest has only 8 percent; isn't that right?

Mr. **Cleary**. About 7.5, 7.6.

Senator **Proxmire**. Are you No. 3?

Mr. **Cleary**. No. I am No. 4, unfortunately. We are even smaller than that.

Senator **Proxmire**. Then Mr. Hayden and Mr. O'Brien, you both made the point, as I understand it, that by following the deregulation recommendation, that the Federal Government would probably lose a great deal more in revenue than it would gain by making a reduction. So this would probably deepen the deficit, because the revenue that comes in from effective enforcement is very big and the cost of that enforcement is relatively modest. For every dollar of enforcement, you apparently bring in tens of dollars, perhaps hundreds of dollars; is that right?

Mr. **Hayden**. Yes, sir. That is correct.

STAFFING OF CUSTOMS DEPARTMENT

Senator **Proxmire**. Your case seems very clear here. But can you establish the argument that BATF, expert as they are in other regulation areas, are also more expert than, say, the Customs Department in the enforcement as far as revenue is concerned?

Mr. **Hayden**. Senator, one of the problems we have been confronted with as far as Customs is concerned is the inadequate staffing of Customs. If it appears as though Customs will assume the responsibility of BATF, then I guess we are in for some tough times.

It might surprise you to know that there have been instances that we have had to pay Customs inspectors overtime in order to collect the tax due Customs for imports that we received on our premises. So it becomes a question of the staffing of Customs.

Senator Proxmire. I understand that Customs will have a 1,700-position cut in fiscal 1983. So their ability to enforce revenue statutes would be reduced.

Mr. Hayden. Hampered.

WITNESSES CONTACTED BY TREASURY DEPARTMENT

Senator Proxmire. One final question for all of you. Mr. Norvell, you gave us some extremely disturbing testimony this morning when you responded to Senator Cannon about the fact you were called by the Treasury Department. As you know, one of the most treasured opportunities we have as citizens is the guarantee in the Constitution, in the first amendment, you have a right to petition your Government. That is what you are here doing this morning, as good citizens. Any kind of intimidation, of course, interferes with that, very seriously.

I would like to ask each of you gentlemen who are at the table to tell us, starting with Mr. O'Brien and going across, if you were contacted in any way by the Treasury Department in connection with your testimony before the committee.

Mr. O'Brien. They did try to reach me Friday afternoon. I was not in my office. I got the message over the weekend that they had been trying to reach me.

Senator Proxmire. Mr. Cleary?

Mr. O'Brien. By the way, I also learned earlier this morning why they had been trying to reach people, so I did not return the call.

Senator Proxmire. Very good.

Mr. Cleary. I was traveling on Friday, but the gentleman with the same name tried to call me. By the time I was in the office, it was too late.

Senator Proxmire. Mr. Fuller?

Mr. Fuller. We are quite a small concern relative to these other gentlemen. There is not always someone at our phone. Anyway, I called my wife and asked her if I had received a call. She said not to her knowledge. So it is in the realm of possibility they might have attempted to reach us and weren't able to do so.

Senator Proxmire. I hope you don't feel insulted. [Laughter.]

Mr. Fuller. But I must admit that being a small concern like we are, and these other gentlemen have their lawyers and whatnot, I feel I am kind of hung out here a little bit in the sense that my license is at stake also. I don't have a staff of lawyers to solve these problems. So I do sit here a little lightly, you might say.

Senator Proxmire. Mr. Hayden?

Mr. Hayden. No, sir. I was not contacted.

Senator Proxmire. Thank you, Mr. Chairman.

Senator Abdnor. Thank you, Senator Proxmire.

Thank you, gentlemen, for your fine testimony.

I just want to say, Mr. Fuller, chairman of the entire Appropriations Committee is Senator Hatfield. I am going to tell him about your very excellent testimony.

Mr. FULLER. Thank you.

Senator ABDNOR. Thank you all. We could ask a lot more questions, but we are 40 minutes behind, so I guess we had better move on.

Mr. HAYDEN. Mr. Chairman, may I respectfully request that the two letters from the National Association of Beverage Importers be included as part of my testimony as exhibits 1 and 2.

Senator ABDNOR. Fine. We will include them in the record.

[CLERK'S NOTE: The letters from the National Association of Beverage Importers appear on page 41.]

PANEL ON ARSON AND ARSON FRAUD

FIREMAN'S FUND INSURANCE CO.

STATEMENT OF PHILIP SIMKINS, THE FIREMAN'S FUND, SAN FRANCISCO, CALIF.

Senator ABDNOR. Our next witnesses are Robert Smith, L. A. Troske, and Philip Simkins.

Gentlemen, we welcome you to the committee. I suppose on other occasions we have been behind this far on our schedules. I apologize to you for the delay. We have been anxious to hear your testimony. I don't know which one of you will be the spokesman for the panel, but whoever that is, go right ahead.

Mr. SIMKINS. Mr. Chairman, members of the subcommittee, I am with the Fireman's Fund Insurance Co., located in San Francisco, Calif. It has been around for 119 years, writing property and casualty insurance for all States of the Union. We have committed major resources to the suppression of arson and arson fraud. We think it is an economic as well as a social responsibility.

More than one-fourth of all fires are caused by arson. In 1981, arson killed 800 people. It cost society a billion and three-quarters dollars in property damage. A relatively small percentage of these fires were started to gain profit from an insurance policy. The bulk are set to cover up theft, murder, terrorism, burglary, and some by vandals and pyromaniacs.

HIGH INCIDENCE OF ARSON IN UNITED STATES

There is certainly a very high incidence of arson in the United States. It is a major crime.

The scope of enforcement is immense. Fully 87 percent of all fire departments are staffed by volunteers. They extinguish fires in a good fashion. But they lack the time to investigate the cause and to track down the arsonist.

The Fireman's Fund and the insurance industry are learning how to take the profit out of arson. Our people are well-trained in cause and origin investigation. With proper training, it is not difficult to find the difference between an accidental fire and one that is set by the arsonist. When they establish a motive and that motive is to claim more money from the insurance policy than was destroyed by the fire, being fraud, we deal effectively with that through the civil courts.

The insurance industry can establish the fact that a crime has been committed. It can do nothing about the arrest and conviction of the arsonist. We are not clothed with that authority. What is needed is a continuation of the unrelenting efforts of law enforcement agencies to make it very tough on the criminal who commits arson.

ASSISTANCE OF BATF IN ARSON CASES

The Bureau of Alcohol, Tobacco and Firearms has been of tremendous assistance to local crime enforcement agencies. In a relatively short time the ATF agents have become recognized as an elite corps of arson fighters, welcomed by local authorities and feared by the criminals. Their arson squads have successfully filled an important gap in the all-important criminal investigation side of this private-public team effort.

We are now just beginning to see a peaking and in some areas a decline in the number of fires started by this criminal, the arsonist. Without the concentration of ATF forces to train personnel and bring these criminals to justice, often involving interstate activities, the progress gained will soon be reversed.

The unique service performed by ATF arson squads must not be diluted. The public is just beginning to reap the benefits of tough enforcement. We cannot retreat.

We are opposed to any change that would impede the progress the Bureau is making in detection and control of arson. While we oppose the dismantling of the agency as it presently exists, we recognize for the sake of efficiency that perhaps some alternative administrative vehicle may be wise. Should the ATF functions be incorporated into another agency, we certainly would recommend earmarking at least the $10 million of that agency's budget for the exclusive use of arson suppression.

Thank you very much.

PREPARED STATEMENT

Senator **Abdnor**. Thank you, Mr. Simkins. Your prepared statement will be placed in the record at this point.

[The statement follows:]

Prepared Statement of Philip G. Simkins, Assistant Vice President and Manager of Property Claims, Fireman's Fund Insurance Co.

Mr. chairman and members of the subcommittee, Fireman's Fund Insurance Co., established in San Francisco 119 years ago, is one of the leading property and liability insurers in the United States. We insure property in every State of the union. We have committed major resources to the suppression of arson and insurance fraud, an economic and social commitment that we take very seriously.

The Bureau of Alcohol, Tobacco and Firearms has been of tremendous assistance to local crime enforcement agencies. We are opposed to any change that would impede the progress they are making in the detection and control of arson.

We are just now beginning to see a peaking and in some areas a decline in the number of fires started by this criminal, the arsonist. Our people are well trained in cause and origin investigation. With proper training it is not difficult to find the difference between the accidental fire and the one that is "set" by the arsonist. When we establish the evidence of arson, we move on to motive. If the motive was profit and the target is our insurance policy, we deal quite effectively with that through the civil courts.

Twenty-eight percent of all fires are caused by arson. A relatively small percent of fires are started to gain profit from an insurance policy. The bulk are set for a number of other reasons, primarily revenge, murder or theft cover-up, elimination of competition and terrorism. Vandals and pyromaniacs also play a part in the very high incidence of arson, a major crime in the United States.

Fireman's Fund and the insurance industry are learning how to take the profit out of arson. What is needed now is a continuation of the unrelenting efforts of law enforcement agenices to make it very tough on the criminal that commits arson. The insurance industry can establish the fact that a crime has been committed. It can do nothing about the arrest and conviction of the arsonist. We are of course not clothed with that authority.

In 1981, arsonists killed 900 people. They cost society $1.75 billion in property damage.

The ATF arson squads have successfully filled an important gap in the all important criminal investigation side of this private/public team effort. In a relatively short time, the ATF agents have become recognized as an elite corp of arson fighters, welcomed by local authorities and feared by the criminals. The scope of the enforcement problem is immense. Eighty-seven percent of all fire departments are manned by volunteers. They extinguish fires in an admirable fashion, but time to investigate the cause and experience to track down the arsonist is sadly lacking. Without the concentration of the ATF forces to train personnel and bring these criminals to justice, often involving inter-State activities, the progress gained will soon be reversed.

The unique service performed by the ATF arson squads must not be diluted. The public is just beginning to reap the benefits of tough enforcement. We cannot retreat.

While we oppose dismantling the Bureau as it presently exists, we recognize the need to study alternative administrative vehicles for the sake of economy. Should the ATF functions be incorporated into another agency, we certainly would recommend earmarking at least $10,000,000 of the agency's budget for the exclusive use or arson suppression.

NATIONAL FIRE PROTECTION ASSOCIATION [NFPA]

STATEMENT OF ROBERT B. SMITH, DIRECTOR, GOVERNMENT AFFAIRS, NATIONAL FIRE PROTECTION ASSOCIATION

DESCRIPTION OF NFPA

Mr. SMITH. Mr. Chairman, I will try in the interest of brevity to shorten my statement.

Senator ABDNOR. Fine. I appreciate that.

Mr. SMITH. I am Robert B. Smith, director of government affairs for the National Fire Protection Association [NFPA].

In the way of introduction, may I point out that the National Fire Protection Association is a private, nonprofit, technical and educational membership organization whose sole purpose is the reduction of loss of life and property by fire.

Founded in 1896, NFPA has a diversified membership of more than 32,000 representing the fire services; Federal, State, and local government, industry, insurance, engineers, architects, educational, health care, and many other interest groups.

A portion of our membership is represented by the Fire Marshals Association of North America, a membership section of NFPA. These members are those individuals charged with the statutory responsibility for fire investigation in the communities across our Nation. It is from this broad fire service representation that we provide the following testimony.

The NFPA has been very impressed with the accomplishments of the Bureau of Alcohol, Tobacco and Firearms' arson program, and we firmly believe that this program must be maintained. Our strong position in this regard is based upon the continued need for a national cooperative and supportive deterrent to the ever-increasing crime of arson.

The recognized proven success of this program results from understanding the dire need for cooperative, specialized, and technical support at the Federal level to State and local arson abatement efforts.

It must be understood that the present BATF arson program provides otherwise unobtainable technical, scientific, and logistical support to the existing State and local arson abatement activities.

NATIONAL ARSON RESPONSE TEAM CAPABILITY

As very brief examples of this otherwise unavailable support, may we remind the subcommittee of the BATF's National Arson Response Team capability, providing direct and immediate assistance to the communities upon their request when the local arson problem has already exceeded or severely taxed the capabilities and resources of the local jurisdiction. The present ongoing National Arson Response Team's support to Lynn, Mass., after its recent modern-day holocaust exemplifies this much needed supportive Federal role.

As a further example of the unique specialized resources provided by this Federal program, one would only have to read the recent program of the American Academy of Forensic Sciences 34th Annual Meeting, whose theme was "Fire and Arson." The more than 650 leading scientists, lawyers, and fire and law enforcement professionals in attendance benefited from presentations in nine specialized, very technical subject areas by BATF specialists. These topics included "Accelerant Recovery from Concrete," "Guidelines for Recovery and Identification of Arson Accelerants," and "Accelerant Recovery from Arson Suspects."

This resource of technical expertise available to support the local fire abatement effort is not, and cannot be, expected to be provided by each community, town or city across our Nation.

FIRE SUPPRESSION TACTICS

Mr. Chairman, another very critical point must be addressed. Our communities demand, and rightfully expect, immediate response and effective suppression tactics whenever a fire occurs. The immediacy of fire suppression makes intolerable the acceptance of fire extinguishment efforts based upon delaying tactics, proposals for amendments in the fire apparatus response, studies and restudies of appropriate extinguishment action, or other time-consuming exercises—regardless of their good intent—while the home or business burns to the ground. Our Nation's arson crime is also a burning issue. We cannot afford delaying decisions affecting on a daily basis the well-being of the present arson program.

It is our understanding that since September of last year more than 400 personnel have left BATF, including more than 50 experienced, very costly trained agents.

Regardless of the good intent of present delays in moving ahead with this program, the present state of limbo of the national arson program is playing directly into the hands of the fire setter. The continuing immediacy of the arson problem warrants action now.

In the interest of preserving the effectiveness and accomplishments of the present arson program, we support the administration's proposal to merge this activity with those of the U.S. Secret Service. We request that adequate funding be provided for this merger, its continuity, and local community technical support. We desire assurance that this cost-effective program will be maintained and suggest to you, sir, that you may want to consider requesting an annual report indicating the accomplishments of the program's continued and supportive actions with State and local jurisdictions.

Thank you very much, Mr. Chairman, for the opportunity to testify.

Senator Abdnor. Thank you very much, Mr. Smith.

Mr. Troske?

St. Paul Fire & Marine Insurance Co.

STATEMENT OF LEE TROSKE, SENIOR CLAIMS OFFICER, ST. PAUL FIRE & MARINE INSURANCE CO.

Mr. Troske. Mr. Chairman, members of the committee, I am very pleased for the opportunity to be here today to speak to you about the potential effect the proposed merger of the ATF and the Secret Service would have on our industry.

My name is Lee Troske. I am senior claim officer of the St. Paul Fire & Marine Insurance Co. The St. Paul writes property and casualty insurance in all 50 States and the District of Columbia.

I also happen to be chairman of the property claims services division of the American Insurance Association and a native of your good State of South Dakota.

ARSON FOR PROFIT

Arson artificially inflates insurance premiums and causes needless human suffering and loss of life. To attack that, slightly more than 2 years ago the St. Paul undertook a coordinated series of efforts to challenge the arson problem, and specifically "arson for profit," wherever it was suspected.

We held training programs around the country to strengthen the arson detection skills of our claim personnel. We sponsored various programs like the neighbor arson awareness Campaigns, paid for the tuition of local police and fire authorities, paid for the creation and attendance of these personnel at various crime-related seminars. We believe that these efforts, in conjunction with the excellent cooperation and assistance which we have received from the BATF as well as State and local authorities, have yielded remarkably good results in our common purpose—to stem the rising tide of arson.

Last year, we are pleased to say, was our most successful year to date in identifying and defending arson-for-profit claims. During 1981, the St. Paul investigated 158 such claims representing $9,415,292. The status of those claims by year-end was as follows;

50 claims, worth $2,769,573, successfully defended or denied; 42 claims, worth $1,997,604, still in litigation; and 66 claims, worth $4,648,115, still under investigation.

The BATF has been instrumental in these savings as well as appropriate criminal prosecution, for as Mr. Simkins indicated earlier, ours is the civil side and not the criminal realm.

EXAMPLE OF BATF INVOLVEMENT IN SUSPECTED ARSON

A recent example would be a fire and explosion which destroyed a building which we insured in a small southern town. The fire threatened an entire block of the town's business district. BATF investigators joined the State fire marshal in a search for the cause of that explosion. We also hired an arson specialist to investigate on our behalf from the civil side. Evidence gathered by BATF investigators was presented to a special grand jury, and during 1981 an indictment against our insured was issued. Before the case came to trial, the insured pleaded guilty to the criminal charge and withdrew his claim against the St. Paul policy, thus saving our policyholders premiums to the extent of $100,000.

We firmly believe that without the dedicated commitment of BATF personnel to their arson/explosives function, this kind of success would not have been attainable. Hence, my reason for testifying today.

All things being equal, we would prefer that the Bureau continue to function within its present organizational framework. We recognize, however, the tremendous pressures existing today to maximize the efficiency and economy of all governmental functions. As a company, we operate under similar constraints and are ever mindful of ways to make more effective use of available resources and to reduce administrative overhead.

We are also aware, though, that the primary function of the Secret Service is in the area of providing protective services for the President and other Government officials. It has also been noted that due to manpower shortages, particularly during campaign years, Secret Service agents are hard pressed to provide the level of protective services required. Accordingly, we are very concerned that the vital roles played by BATF agents in investigating arson fires and providing technical and lab support and training to State and local officials may be inadvertently compromised if the proposed merger is effected.

It was pleasing to learn during a recent visit with Norman Keuhni, special agent in charge of the Bureau's St. Paul, Minn., office, that if the merger is implemented, Secret Service Director John Simpson plans to carry out the arson/explosives functions at least at the same level as they are presently being enforced.

The St. Paul shares with other representatives of the insurance industry, however, the belief that this committee should allocate resources specifically for this purpose. Experience indicates that if this doesn't occur, this valuable function may be lost in the merger process.

Senator **Abdnor**. May I interrupt you for a moment? Did I hear you say that someone from the Secret Service visited your office?

Mr. TROSKE. No, sir, they did not. I contacted the local representative of the Bureau of Alcohol, Tobacco and Firearms in my city prior to this testimony to determine from them their role in this arson issue. They did not contact me.

Senator ABDNOR. Thank you.

SUPPORT FOR SENATE BILL 294

Mr. TROSKE. Also, I would like to express my strong support for Senator Glenn's bill, Senate bill 294, which would permanently reclassify arson as a part 1 crime in the FBI Uniform Crime Reports.

LETTER AND PREPARED STATEMENT

I also have a letter addressed to you, Senator Abdnor. I would like you to make it a part of the record of this hearing. The letter emphasizes the need to earmark moneys and resources for the antiarson function.

Thank you for your patience.

[The letter and statement follow:]

AMERICAN INSURANCE ASSOCIATION

February 19, 1982

Honorable James Abdnor
4327 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

The American Insurance Association is a trade association of approximately 150 property and casualty insurers. Our members, which are mostly stock companies, write business in all 50 states. In this regard, the AIA companies have a deep interest in anti-arson activities. Your subcommittee will hear from two AIA member companies, the Fireman's Fund and St. Paul Fire and Marine. These two companies will be testifying on the question of the reorganization of the Bureau of Alcohol, Tobacco and Firearms.

The American Insurance Association wishes to emphasize that its paramount interest in this regard is the furtherance of the federal anti-arson mission. We have followed the proposed reorganization with great interest since it first was publicly discussed last September.

We recommend that your subcommittee earmark at least 10 million dollars for anti-arson work. If money is earmarked for the arson function our earlier fears that arson activities would not be adequately carried out by the Secret Service are no longer realistic. Because of the level and degree to which the AIA has been active in the public debate over the reorganization, we wish to make our position quite clear to your Subcommittee at this time. To continue further with current prohibition against the organization preserves the unhealthy state of limbo which exists now within the Bureau of Alcohol, Tobacco and Firearms. We urge the Subcommittee to act expeditiously with the earmarking of funds for anti-arson activity. As long as money is designated for the arson function we can think of no compelling reason why the reorganization ought to be delayed. We hope these views are helpful to your subcommittee in its deliberations.

Sincerely yours,

Penelope Farthing

Penelope S. Farthing
Senior Counsel

PREPARED STATEMENT OF LEE A. TROSKE

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

Mr. Chairman, members of the Subcommittee

I am grateful for the opportunity to speak to you today about the potential effect that the proposed consolidation of the Bureau of Alcohol, Tobacco & Firearm's into the Secret Service may have in thwarting the alarmingly high incidence of arson in our nation.

My name is Lee Troske, and I am Senior Claim Officer for the St. Paul Fire and Marine Insurance Company. The St. Paul writes property and casualty insurance in all 50 states and the District of Columbia.

Arson artificially inflates insurance premiums and causes needless human suffering and loss of life. To attack that, slightly more than two years ago The St. Paul undertook a coordinated series of efforts to challenge the arson problem -- and specifically "arson for profit," wherever it was suspected.

We held training programs around the country to strengthen the arson detection skills of our claim personnel. In our hometown of Saint Paul, Minnesota, the company sponsored a neighborhood arson awareness campaign. The company pays the tuition of local police and fire personnel to attend crime-related seminars. We have furnished an Arson Investigation Van -- That mobile laboratory not only helps the city's police and fire departments to identify and investigate arson fires, but also serves as a visual deterrant to would-be arsonists. The van's presence at every fire in the city puts would-be arsonists on notice in Saint Paul.

While most efforts to reduce the effect of arson have necessarily been reactions or "after the fact" responses, we have been instrumental in a proactive community-based effort to develop and implement a Juvenile Crime Prevention Curriculum. The curriculum includes a segment on arson, and has been used in public schools in Saint Paul for nearly three years. The curriculum is now being made available nationwide through The St. Paul. More than 1,000 copies have already been distributed to educators and others in 43 states.

We believe that these efforts, in conjunction with the excellent cooperation and assistance which we have received from the BATF as well as state and local authorities, have yielded remarkably good results in our common purpose -- to stem the rising tide of arson.

Last year was our most successful year to date in identifying and defending arson-for-profit claims. During 1981, The St. Paul investigated 158 such claims representing $9,415,292. The status of those claims by year-end was:

50 claims, worth $2,769,573, successfully defended or denied;
42 claims, worth $1,997,604, still in litigation;
and 66 claims, worth $4,648,115, still under investigation.

Fully 32% of suspected arson-for-profit claims submitted in 1981 have already been successfully defended or denied -- 27% are still in the courts, and the remainder still under investigation. These statistics translate into substantial savings to The St. Paul and its policyholders.

The BATF has been instrumental in these savings as well as appropriate criminal prosecution. For example, in 1980 a fire and explosion destroyed a building which we insured in a small southern town. The fire threatened an entire block of the town's business district. BATF investigators joined the state fire marshal in a search for the cause. We also hired an arson specialist to investigate on our behalf. Evidence gathered by BATF investigators was presented to a special grand jury and last year an indictment against our insured was issued. Before the case came to trial, the insured pleaded guilty and withdrew his claim against the St. Paul policy. That saved our policyholders more than $100,000.

We firmly believe that without the dedicated commitment of BATF personnel to their arson/explosives function, this kind of success would not have been attainable.

Hence, my reason for testifying before you today as you ponder a proposal to realign the Bureau's arson/explosives function within the Secret Service.

All things being equal, we would prefer that the Bureau continue to function within its present organizational framework. We recognize, however, the tremendous pressures existing today to maximize the efficiency and economy of all governmental functions. As a company, we operate under similar constraints and are ever mindful of ways to make more effective use of available resources and to reduce administrative overhead.

We are also aware though, that the primary function of the Secret Service is in the area of providing protective services for the President and other government officials. It has also been noted that due to manpower shortages, particularly during campaign years, Secret Service agents are hard-pressed to provide the level of protective services required. Accordingly, we are concerned that the vital roles played by BATF agents in investigating arson fires, and providing technical and lab support and training to state and local officials may be inadvertently compromised if the proposed merger is effected.

It was gratifying to learn during a recent visit with Norman Keuhni, Special Agent in charge of the Bureau's Saint Paul office, that if the merger is implemented, Secret Service Director John Simpson plans to carry out the arson/explosives functions at least at the same level as they are presently being enforced. The St. Paul shares with other representatives of the insurance industry, however, the belief that this committee should allocate resources specifically for this purpose. Experience indicates that if this doesn't occur, this valuable function may be lost in the merger process.

While I am before you I would also like to express my strong support for Senate Bill 294, the Glenn bill, which would permanently re-classify arson as a Part 1 crime in the FBI Uniform Crime Reports.

Thank you for your attention and thank you for sharing my ardent belief that private sector, state and local efforts to suppress the crime of arson must not be allowed to go unsupported at the federal level.

NATIONWIDE FIGURE INCREASING

Senator **Abdnor**. Thank you, Mr. Troske. Incidentally, what part of South Dakota did you hail from?

Mr. **Troske**. I come from a very large town called Doland, S. Dak., where an illustrious Vice President also came from, Hubert Horatio Humphrey.

Senator **Abdnor**. That is a great community.

I might say I am a client of St. Paul Fire & Marine.

Mr. **Troske**. Thank you.

Senator **Abdnor**. We thank you for that excellent testimony.

This 28-percent figure you used, Mr. Simkins, is that nationwide or is that just within your group?

Mr. **Simkins**. Those figures are pretty hard to come by because there has been such a varying amount of statistics kept. It is one of the things we hope to improve on in the industry. This would be a nationwide figure.

Senator **Abdnor**. Has that been growing? Was it higher?

Mr. **Simkins**. Yes, it was higher, sir.

Senator **Abdnor**. It was actually higher. It has been dropping some.

Mr. **Simkins**. I think it has. I say it has peaked and is dropping in some areas.

EXCERPTS FROM FIRE JOURNAL

Mr. **Smith**. Mr. Chairman, if you will, sir, our association does maintain annual records in this area. We would be happy to make them available to you.

Senator **Abdnor**. It would be good if we had them. Maybe for Senator Glenn's legislation, too, it would be helpful.

[The information follows:]

REPRINTED FROM FIRE JOURNAL – SEPTEMBER 1981

Highlights of 1980 US Fire Experience

- 6,505 civilians died as a result of fires in the United States in 1980, a considerable decrease of 1,275 deaths or 16.4 percent from 1979.
- The biggest reduction in civilian fire deaths occurred in vehicle fires, where 740 civilians died from fire, a decrease of 51.8 percent from 1979.
- 5,446 of the civilian fire deaths occurred as a result of residential fires in 1980, a decrease of 5.5 percent; residential fires accounted for 83.7 percent of all civilian fire deaths in 1980.
- 4,175 of the civilian fire deaths occurred in one- and two-family dwellings, a decrease of 3.3 percent from 1979; 1,025 civilians died in apartment fires, a decrease of 13.1 percent from 1979.
- 770 civilian fire deaths (13.6 percent of total fire deaths in structures) occurred as a result of incendiary or suspicious fires, an increase of 8.4 percent from 1979. There were 146,000 incendiary or suspicious fires in structures (1.7 percent less than in 1979), and they caused property loss of $1,760,000,000, a substantial increase of 32.5 percent over 1979.
- 134 fire fighters died in the line of duty in 1980.
- 30,200 civilians were injured in fires in the United States during 1980, a decrease of 3.6 percent from 1979. This estimate for civilian injuries is on the low side, due to underreporting of civilian injuries to the fire service.
- 2,988,000 fires were attended by fire departments, an increase of 5.0 percent over 1979.
- There was an estimated $6,254,000,000 in property damage from fire in the United States during 1980, an increase of 8.8 percent from a year ago. Property loss in residential fires alone in 1980 amounted to $3,042,000,000, a substantial increase of 20.3 percent.
- For civilian fire deaths, smaller communities (population under 5,000) experienced the largest decrease in death rates in 1980.
- The Northeast and South generally experienced higher fire incident rates and higher fire death rates than other regions.

The NFPA estimates that 770 or 13.6 percent of all civilian deaths in structure fires occurred in 1980 as a result of fires of an incendiary or suspicious nature. As noted in earlier annual fire experience reports, this estimate is subject to some uncertainty because of difficulties in determining the cause of a fire, but it does indicate that a considerable number of deaths from fires result from arson.

Table 5.
Estimated 1980 United States Fires, Deaths, and Property Loss for Incendiary and Suspicious Fires in Structures

	Number of Fires		*Number of Civilian Deaths*		*Direct Property Loss*	
Type of Fire	*Estimate*	*Change from 1979*	*Estimate*	*Change from 1979*	*Estimate*	*Change from 1979*
Structure Fires of Incendiary Origin	92,000	+4.0%	590	+35.6%	$1,158,000,000	+47.1%††
Structure Fires of Suspicious Origin	54,000	−10.0%	180	−25.0%	602,000,000	+11.3%
Total Structure Fires of Incendiary and Suspicious Origin	146,000	−1.7%	770	+14.8%	$1,760,000,000	+32.5%††

The estimates are based on data reported to the NFPA by fire departments that responded to the 1980 National Fire Experience Survey. For direct property loss, no adjustment was made for inflation in the year-to-year comparison.

†† Change was statistically significant at the 0.01 level.

Highlights of 1979 US Fire Experience

- 7,780 civilians died in fires in the United States in 1979, a decrease of 4.3 percent from 1978.
- 5,765 of the civilian fire deaths occurred as a result of residential fires, a decrease of 6.8 percent from 1978, but residential fires accounted for 74.1 percent of all civilian fire deaths in 1979.
- 4,320 of the civilian fire deaths occurred in one- and two-family dwellings, a decrease of 12.6 percent from 1978. 1,180 civilians died in apartment fires, an increase of 10.3 percent over 1978.
- 1,535 civilians died in vehicle fires in 1979, 19.7 percent of all civilian fire deaths for the year, and an increase of 22.3 percent over 1978.
- 675 civilian fire deaths (8.7 percent of the total) occurred as a result of incendiary or suspicious fires, 27 percent less than in 1978. There were 148,500 incendiary or suspicious fires in structures (7.1 percent less than in 1978) and they caused property loss of $1,328,000,000, a substantial increase of 24.5 percent over 1978.
- 113 fire fighters died in the line of duty in 1979.
- 31,325 civilians were injured in fires in the United States in 1979, an increase of 5.1 percent over 1978. This estimate for civilian injuries is low.
- There was an estimated $5,750,000,000 in property damage from fire in the United States during 1979, a substantial increase of 27.8 percent over 1978.
- 2,845,500 fires were attended by fire departments, an increase of 1 percent over 1978.
- Smaller communities experienced higher fire loss rates than large communities for many fire statistics.
- The Northeast and South generally experienced higher fire loss rates than other regions.

Table 1.
Estimated Total 1979 United States Fires, Civilian Deaths, Civilian Injuries and Property Loss

	Estimate	*Range**	*Change from 1978***
Number of Fires	2,845,500	2,770,500 to 2,920,500	+1.0%
Number of Civilian Deaths	7,780	7,110 to 8,450	−4.3%
Number of Civilian Injuries	31,325	29,375 to 33,275	+5.1%
Property Loss	$5,750,000,000	$5,524,000,000 to $5,976,000,000	+27.8%†

* 95 percent confidence range.

** Estimates for 1978 were revised based on current NFPA methodology and are comparable to 1979 results.

† Change was statistically significant at the .01 level.

The estimates are based on data reported to the NFPA from fire departments responding to the 1979 National Fire Experience Survey. Dollar figures represent direct property loss only.

Table 2.
Estimated 1979 United States Civilian Fire Deaths and Injuries for Selected Property-Use Catagories

	Civilian Deaths			*Civilian Injuries*		
Property Use	*Estimate*	*Change from 1978**	*% of All Civilian Deaths*	*Estimate*	*Change from 1978**	*% of All Civilian Injuries*
Residential (Total)	5,765	−6.8%	74.1%	20,450	−3.8%	65.3%
One- and Two-Family Dwellings**	4,320	−12.6%	55.5%	14,650	−4.8%	46.8%
Apartments	1,180	+10.3%	15.2%	4,175	−16.5%	13.3%
Hotels and Motels	140	+7.7%	1.8%	1,225	+104.1%†	3.9%
Other Residential	125	+212.5%††	1.6%	400	+45.5%	1.3%
Vehicles***	1,535	+22.3%	19.7%	5,175	+39.8%†	16.5%
All Other Categories	480	−30.4%	6.2%	5,700	+18.1%	18.2%
	7,780	−4.3%		31,325	+5.1%	

* Estimates for 1978 were revised based on current NFPA methodology and are comparable to 1979 results.

** Includes mobile homes.

*** This category includes highway vehicles, trains, boats, ships, aircraft, farm vehicles, and construction vehicles.

† Change was statistically significant at the .05 level.

†† Change was statistically significant at the .01 level.

The estimates are based on data reported to the NFPA by fire departments responding to the 1979 National Fire Experience Survey.

Table 4.
Estimated 1979 United States Structure Fires and Property Loss by Property Use

	Structure Fires		*Property Loss*	
Property Use	*Number*	*Change from 1978**	*Estimate*	*Change from 1978**
Public Assembly	30,500	+3.4%	284,000,000	+45.3%††
Educational	22,500	+9.8%	79,000,000	−28.8%
Institutional	29,500	−24.4%	34,000,000	+142.8%††
Residential (Total)	721,500	+3.5%	2,529,000,000	+15.4%††
One- and Two-Family Dwellings**	550,500	−3.2%	2,034,000,000	+14.0%††
Apartments	146,000	+6.2%	343,000,000	+10.6%
Hotels & Motels	11,500	−4.2%	100,000,000	+21.9%
Other	13,500	+12.5%	52,000,000	+225.0%†
Stores and Offices	64,000	+0.8%	457,000,000	−3.8%
Industry, Utility, Defense***	58,000	+5.5%	966,000,000	+62.6%††
Storage in Structure***	64,500	+8.4%†	507,000,000	+48.2%††
Special Structure	46,000	−28.6%†	108,000,000	+8.0%
	1,036,500	−2.4%	$4,964,000,000	+23.4%††

* Estimates for 1978 were revised based on current NFPA methodology and are comparable to 1979 results.

** Includes mobile homes.

*** Since some incidents for these property uses were handled only by private fire brigades or fixed suppression systems and were not reported to the NFPA, the results represent only a portion of US fire experience.

† Change was statistically significant at the .05 level.

†† Change was statistically significant at the .01 level.

The estimates are based on data reported to the NFPA by fire departments responding to the 1979 National Fire Experience Survey. Dollar loss figures represent direct property loss only.

Table 5.
Estimated 1979 United States Fires, Deaths, and Property Loss for Incendiary and Suspicious Fires in Structures

Type of Fire	*Number of Fires*		*Number of Civilian Deaths*		*Property Loss*	
	Estimate	*Change from 1978**	*Estimate*	*Change from 1978**	*Estimate*	*Change from 1978**
Structure Fires of Incendiary Origin	88,500	+1.7%	435	−16.3%	$ 787,000,000	+21.1%†
Structure Fires of Suspicious Origin	60,000	−17.8%	240	−40.7%	541,000,000	+29.7%
Total Structure Fires of Incendiary and Suspicious Origin	148,500	−7.1%	675	−27.0%	$1,328,000,000	+24.5%††

* Estimates for 1978 were revised based on current NFPA methodology and are comparable to 1979 results.
† Change was statistically significant at the .05 level.
†† Change was statistically significant at the .01 level.

The estimates are based on data reported to the NFPA by fire departments responding to the 1979 National Fire Experience Survey. Dollar figures represent direct property loss only.

The NFPA estimates that 1,070 or 12.4 percent of all civilian deaths occurred as a result of incendiary or suspicious fires.

As noted in last year's report, this estimate is subject to some uncertainty because of difficulties in determining the cause of a fire, but it does indicate a considerable number of fire deaths result from arson.[1]

The NFPA annually collects data on fire-fighter fatalities. For 1978, 162 line-of-duty fire-fighter deaths were reported to and verified by the NFPA.[2]

Table 5.
Estimated 1978 United States Fires, Deaths, and Property Loss for Incendiary and Suspicious Fires in Structures and Vehicles

Type of Incident	*Number of Fires*	*Number of Civilian Deaths*	*Property Loss*
Structure Fires of Incendiary Origin	93,246	575	$ 631,679,740
Structure Fires of Suspicious Origin	80,688	471	402,560,510
Total Structure Fires of Incendiary and Suspicious Origin	173,934	1,046	1,034,240,250
Vehicle Fires* Incendiary and Suspicious	48,444	24	54,080,560
TOTAL:	222,378	1,070	$1,088,320,810

These estimates are based on data reported to the NFPA by fire departments responding to the 1978 National Fire Experience Survey. No adjustments were made for unreported fires and losses. Dollar figures represent direct property loss only.

* This category includes highway vehicles, trains, boats, ships, aircraft, farm vehicles, and construction vehicles.

- There were an estimated 173,934 fires of incendiary or suspicious origin in structures during 1978, which resulted in 1,046 civilian deaths and a property loss of $1,034,240,250 These estimates clearly indicate that the arson problem is serious.

In this year's survey, for the first time, data on vehicle fires of incendiary or suspicious origin were collected. Table 5 indicates that an estimated 48,444 fires were deliberately set in vehicles during 1978, resulting in 24 deaths and $54,080,560 in property loss.

OTHER DUTIES OF ARSON SQUAD

Senator **Abdnor**. Incidentally, Senator Glenn had planned to be here. I guess he was unavoidably detained this morning.

You know, we are talking about earmarking. Wouldn't that actually just be an added cost? Are all agents who deal with arson only used for that purpose or do some of them do other work?

Mr. **Simkins**. The arson squad in ATF I believe is primarily concerned with the suppression of arson. What we are suggesting to the committee is that we don't want to lose the expertise of these people who have been made up into teams who have done such a good job. By designating certain funds for the suppression of arson, that we maintain this position and improve on the detection of arson.

Senator **Abdnor**. You were saying, Mr. Smith, that they have lost 400 agents?

Mr. **Smith**. No, sir. The information I have, and since this has been a point that has been discussed, I would like to certainly clear up the thinking here, that since before the start of this year, contrary to some of the things we have heard before, I have been in touch with members of both Treasury and Justice to learn about what activities are going on here. So I guess my information is from the other source, not from them coming to me but from my going to them. But I understand from the BATF that since September they have lost more than 400 personnel. Of that figure, some 50-plus were trained agents.

Senator **Abdnor**. Mr. Troske, I certainly want to commend your company for sponsoring the tuition for local police and fire groups that go to these seminars. That is a very helpful and cooperative movement. Maybe we ought to have more of that.

ADDED DEMANDS ON SECRET SERVICE

You were talking about the Secret Service. Do you think it would be a problem in an election year? Their primary purpose is protective services. With every candidate for office having protection during an election year, this conceivably would be a concern for arsonists, or maybe encourage them in that particular year. Could that happen?

Mr. **Troske**. That is correct. Our major concerns are incidents where the agent of the ATF could be well involved in the investigation of a major explosion and then be called during that period of time particularly for other service. It is the type of investigation that once they get involved in it, it is very difficult to set it aside and then pick it back up at a later date.

Senator **Abdnor**. You say your company operates in 50 States. You have a sizable dollar figure there this year. What has it been in other years? Is it dropping or increasing?

Mr. **Troske**. It has been increasing, but I would have to admit that I believe part of it is our ability to better detect the incident of arson, not only the fire and police but the insurance personnel as well. That coupled with the economy I think is a part of the rapid increase, and our attention to it, I think, once we start paying more attention to things, we see the numbers do climb. But I share

Mr. Simkins' testimony that I believe it has peaked. At least we are hopeful it has.

Senator **Abdnor**. Thank you.

Mr. Simkins, has your insurance been involved in any large and well-publicized fire losses lately? I am thinking specifically of the MGM Grand and Harvey's Casino, both in Nevada. Have you had any other large and dramatic losses? I think we would like to hear about them.

Mr. **Simkins**. Harvey's, of course, was a pretty good example of explosion by terrorism and for ransom. It is about a $22 million loss. We had most [illegible] that risk. That is where the gentleman came in and planted a large bomb in the casino and wanted to get $20 or $30 million in ransom. They were never able to do it, and the bomb eventually exploded. ATF was well-represented in that investigation. Those perpetrators have been apprehended.

An example of the type of work that we cannot do would be about a $4.5 million loss in a shopping center in Juneau, Alaska. This is not only terrorism, but it was started to do away with the only successful business in that shopping center from a competition standpoint. This is a $4 million loss. We insured the restaurant completely. The restaurant owners and operators were innocent. Yet, the AFT, with the assistance of the local people, was able to run down those people who had burned this restaurant down in order to do away with competition.

To give you an idea at what high levels this operates, these people were arrested, indicted and found guilty. We expect to get all of our $4 million back from them. They are that high on the list of citizens in and about Juneau. So it is necessary to have pretty good investigators to bring people like that to justice.

Senator **Abdnor**. Gentlemen, we will maybe have additional questions. If we do, we would like to feel free to submit them to you in writing. You come from far points of the country to testify. We are very appreciative of it. I am sure there will be great discussion carried on in our committee room when the time comes. Thank you very, very much.

CORRESPONDENCE

We will insert in the record at this point a letter from the Alliance of American Insurers.

[The letter follows:]

LETTER FROM ALLIANCE OF AMERICAN INSURERS

March 1, 1982

The Honorable James Abdnor, Chairman
Senate Appropriations Subcommittee on
Treasury, Postal Service and General
Government
132A Russell Senate Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The Alliance of American Insurers is a major national trade association of more than 150 property and casualty insurance companies. Our members provide both personal and commercial forms of property insurance protection in all 50 states and the District of Columbia. The Alliance, along with its member companies, has for several years been in the thick of the fight to reduce the malignant crime of arson. We have been actively involved in studying the scope of arson, its causes and effects as well as the development of strategies and resources to help control the deadly consequences of arson and arson-for-profit. Staff members at our home office in Chicago have worked and cooperated with the "arson unit" at the Bureau of Alcohol, Tobacco and Firearms (BATF). The result of that working relationship has helped to curtail the crime of arson in the Chicago area.

The Alliance strongly supports the Administration's proposal to transfer to the U. S. Secret Service, the Explosives Enforcement Office, which is responsible for enforcing the "arson control" function within the Bureau of Alcohol, Tobacco and Firearms. The Congress should drop its resistance to the transfer of the BATF Arson functions. In our opinion, the transfer should take effect immediately in order to preserve the functions and the cost effectiveness of transferring the arson unit. It is also extremely important that adequate funding be provided in order that the continuity of the arson program be maintained.

The deadly, billion-dollar crime of arson has increased approximately 400 percent over the past ten years. Each year this heinous, indiscriminate killer takes the lives of a thousand people and injures as many as ten thousand others. Arson annually causes approximately $1.76 billion in direct property damage and up to $15 billion in indirect losses. The conviction rate for arsonists stands at a dismal two percent nationwide. Of this figure, only 0.7 percent are ever incarcerated. As you know, the local law enforcement agencies have principle jurisdiction over the crime of arson. Arson today, however, has reached epidemic proportions and is nationwide in scope.

States and localities are ill-equipped to deal with the arson-for-profit problem as it may cross state boundaries. In most instances, states lack the resources and technical expertise to deal with arson-for-profit schemes. The Bureau has been most effective in assisting the states with this problem. BATF's investigative efforts have been consistent with its federal role while striking the appropriate balance of federal/state cooperation.

BATF has assisted, rather than preempted state authority. The arson unit has initiated a realistic approach in the fight against the arson crime problem by focusing on the investigation of explosive-related arson-for-profit schemes. BATF has promoted and applied the "Task Force" approach to attack identified arson crime problems in specific areas. The Bureau has four national response teams with the capability of providing a unit within 24 hours, to any location in the country, to assist in the investigation of explosive-related incidents. Another major thrust to BATF's enforcement approach encompasses the training of state/local and other federal agencies in the detection and investigation of "arson-for-profit" schemes and other related tactics employed by organized crime and white collar criminals. A one-week "arson-for-profit" training course for state/local enforcement officers has been developed and implemented. The course is designed to enhance the local investigators' capability to conduct complex, profit-motivated arson investigations. The "arson unit" has the ability to accomplish in a few days what a normal, local fire investigation team might take months to accomplish.

Jurisdictional constraints and interstate involvement of arson-for-profit schemes serve to undermine diligent local efforts to combat the problem. What is needed is a unified, consistent federal plan capable of providing support to local law enforcement officials. The Bureau has proved overwhelmingly that it has the capability of providing such support.

Arson in criminal bombings represent some of the malicious criminal activity in our society today with respect to wanton disregard for human life and property. Targets range from residents to commercial operations, from vehicles to schools. The total number of arson losses are now equal to, or greater than the total number of burglary and auto theft losses perpetrated in the United States. The efforts of the Bureau in aiding state and local law enforcement agencies in developing strategies to curb such crime is yet another testimony to the willingness of BATF to form an alliance with state and local law enforcement agencies in a united front against arson crimes.

It is most urgent that Congress ratify the transfer of the arson functions to the U.S. Secret Service today; the continued operation of the unit is in jeopardy. We have been informed by our staff in Chicago that the morale and budget for the arson unit continues to deteriorate. The staff (support and agents) have received "reduction-in-force" (RIF) notices and the young, aggressive persons with less seniority on the job are seeking employment elsewhere. Nine people have left the Chicago office recently and of the nine, three were arson investigators. Money is not available to purchase gas or provide for upkeep of the unit cars or for out-of-state travel. If the situation does not improve within the next 30 days, we are told that a 50 percent reduction in total personnel may be necessary.

In our opinion, your committee has a most difficult task. Testimony has been presented, "pro" and "con", concerning the transfer of BATF. The Bureau has enforcement responsibilities for alcohol, tobacco and firearms. These areas of responsibility are unique and unrelated. What is good for the Division of Tobacco and what is best for the Firearms Division may not be equally as good for the Alcohol Division. Your Committee, therefore, must look at each function, now being performed by BATF, on an individual basis and make your decision. We do not attempt to articulate what should happen with all the functions within BATF. We have only been directly involved with the "arson unit". Therefore, we can only testify to what should happen to the arson functions.

Our paramount interest is the furtherance of the federal anti-arson mission. We have followed the proposed reorganization with great interest since it was first publicly discussed last September. It is our understanding that when the transfer is implemented, Secret Service plans to carry out the arson/explosive functions at the same FY 81 level. It has been our experience with federal government, that in order for a function to continue, resources must be allocated specifically for that purpose.

We urge that the following conditions be a party to the reassignment:

- the BATF Arson Enforcement Program, be maintained as a separate unit within the Secret Service, and that this unit have the authority to manage its own budget and staff and maintain a separate identity within the Secret Service;

- the budget be sufficient to support an effective level of arson enforcement, such as existed in FY 1981;

- the investigatory/law enforcement role of agents assigned to the explosives (arson) unit not be subordinated to the protective services role of the Secret Service.

We would hope that the Subcommittee would seek and obtain assurances from the Department of the Treasury and the U.S. Secret Service that the same level of commitment for FY 81 be maintained.

BATF has been of tremendous assistance to local crime enforcement agancies. In a relatively short time, the agents have become recognized as an elite core of arson fighters, welcomed by local authorities and feared by the criminals. Their arson squads have successfully filled an important gap in the all-important criminal investigation side of this private/public team effort. We are just now beginning to see a peaking, and in some areas a decline, in the number of fires started by the arsonist. We feel strongly that the arson program can meet the demand for an effective and coordinated enforcement effort in the battle against the crime of arson.

Mr. Chairman, we congratulate you for your leadership in the fight against the crime of arson. We ask that this statement be made a part of the hearing record.

Thank you.

Sincerely,

James E. Jones Jr.

James E. Jones, Jr.
Government Affairs Representative

SUBCOMMITTEE RECESS

Senator **Abdnor**. This subcommittee will stand in recess until 2 p.m. this afternoon.

[Whereupon, at 12:08 p.m., Monday, February 22, the subcommittee was recessed, to reconvene at 2 p.m. the same day.]

[AFTERNOON SESSION, 2:05 P.M., MONDAY, FEBRUARY 22, 1982]

NONDEPARTMENTAL WITNESSES

PANEL ON TOBACCO INTERESTS

OFFICE OF TAXES AND FINANCE, STATE OF NEW YORK

STATEMENT OF JAMES H. TULLEY, JR., COMMISSIONER, OFFICE OF TAXES AND FINANCE, STATE OF NEW YORK

PREPARED STATEMENT

Senator ABDNOR. The subcommittee will come to order.

We will commence this afternoon with a panel from the tobacco interests.

Senator Moynihan is unable to be with us, so a statement from him will be placed in this record.

[The statement follows:]

PREPARED STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM NEW YORK

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you to express my interest in seeing that the Federal Government continue to actively enforce the Federal Contraband Cigarette Act. Accompanying me is James H. Tulley, New York State Tax and Finance Commissioner who will testify about the important role the Bureau of Alcohol, Tobacco and Firearms has had in stemming the loss of cigarette tax revenue in New York State.

As the members of the subcommittee know, Congress enacted the Federal Contraband Cigarette Act—Public Law 95-575—in 1978 with the goal of reducing the interstate trafficking in contraband cigarettes. That legislation was passed in large part in response to a 1977 report by the Advisory Commission on Intergovernmental Relations—ACIR—which indicated that, in 1975, the States were losing $391 million in cigarette tax revenues as a direct result of cigarette bootlegging. State law enforcement officials felt at the time that State efforts in this area were largely ineffective given the interstate nature of the problem. Public Law 95-575 made it illegal to transport, in interstate commerce, large quantities of contraband cigarettes. Responsibility for enforcing the act was given to the Bureau of Alcohol, Tobacco and Firearms in 1979.

Trafficking in contraband cigarettes is a viable activity because of the differential in State cigarette tax rates. A State like New York, which is considered a high tax State, is where the contraband cigarettes are consumed, while a low tax State which is the source of these contraband cigarettes, gains in tax revenues. Were tax rates to be uniform, this problem would no longer exist.

The administration has indicated that prior to fiscal year 1983, the responsibility in this area is to be returned to State law enforcement and revenue officials. Remaining functions of the BATF which have to do with tobacco are apparently to be transferred to the Customs Service. Commissioner Tulley has indicated that should this occur, New York could expect to lose somewhere between $60 and $70 million in cigarette tax revenues as a result of increased trafficking in contraband cigarettes. Nor should this be viewed as a problem facing only my own State. As I have indicated, prior to the BATF involvement with this effort, States were losing over $390 million each year in cigarette tax revenues. The ACIR study concluded that bootlegging was a serious problem in 14 States and a moderate one in 8 other

States. Those States would also suffer a loss in tax revenues were the Federal role in this area to end.

Furthermore, this has not been an expensive or unproductive program. The total cost to the BATF since the program's inception in 1979 has been under $10 million. It has also been shown to be a cost effective program. For example, in 1980, it is estimated that cigarette tax revenues were $104 million higher because of less cigarette tax evasion, much of this due to the efforts by the BATF. An August 1981, evaluation of this program by the BATF indicated that under the program $5 has been returned to the States for every $1 spent by the BATF. In addition, given the interstate nature of the problem, it is clear that the Federal Government should have concurrent responsibility with the States for combatting this activity.

In conclusion, let me indicate my appreciation to Senator Abdnor who, during the debate on the Treasury appropriations bill last December, indicated to Senator D'Amato and I that he would raise the matter of continued funding for this program during the conference committee deliberations with Members of the House on that measure. I would hope the members of the subcommittee would support such funding, in addition to seeing that this program continue despite the administration's plan to eliminate the BATF.

I thank you for your attention and would be pleased to answer any questions that members of the subcommittee might have.

INTRODUCTION OF WITNESSES

Senator ABDNOR. Mr. James Tulley of New York and J. Robert Murphy, Leon Rothenberg, and Louis Ehrlich, Jr., would you please come forward?

I see we are short a couple of them. Do you know what happened to the others?

Mr. TULLEY. No, I don't.

Mr. EHRLICH. I am Louis Ehrlich. I think Leon Rothenberg and Robert Murphy—I don't see them in the room. I know they planned to be here.

Senator ABDNOR. That is fine. We will just proceed.

Mr. Tulley, would you please proceed.

AID TO STATES FOR CIGARETTE ENFORCEMENT

Mr. TULLEY. Thank you, Mr. Chairman. My name is James H. Tulley, Jr. I am commissioner of taxes and finances for the State of New York.

I am here to urge that a specific Federal budget appropriation be allocated to insure the continuation of an active Federal program to aid the States in cigarette enforcement. Senators Daniel Patrick Moynihan and Alfonse D'Amato have introduced an amendment to the Department of the Treasury appropriation bill to restore Bureau of Alcohol, Tobacco and Firearms funding for enforcement of the Federal Contraband Cigarette Act of 1978—Public Law 95-575. It is urgent that you support the Moynihan-D'Amato amendment.

REDUCTION IN STATE CIGARETTE TAX LOSSES

The Cigarette Contraband Act, which makes it a Federal crime to transport cigarettes across State lines for the purpose of avoiding State cigarette taxes, was passed after several years of concerted effort by tax administrators from numerous States. Prior to the enactment of the Cigarette Contraband Act, the Advisory Commission on Intergovernmental Relations estimated that the States were losing $391 million in cigarette tax revenue each year. The

Commission estimated that New York alone was losing $72.3 million annually.

In the last fiscal year, New York has reduced State cigarette tax losses to $28 million. I attribute this significant improvement largely to BATF's enforcement of the Cigarette Contraband Act. If Federal enforcement is curtailed, I would expect New York's losses to increase by about $40 million annually. New York City would lose an additional $10 to $15 million annually.

When the Cigarette Contraband Act was enacted in 1978, New York was optimistic this law would be an effective tool in reducing revenue losses by curbing cigarette tax evasion and organized crime's involvement in bootlegging. We have not been disappointed.

NEW YORK SPECIAL INVESTIGATIONS BUREAU

Let me cite as a recent example an investigation conducted last year in western New York by our Special Investigations Bureau. Utilizing information developed by ATF, our investigators made the largest seizure of contraband cigarettes ever introduced into the normal distribution system. We also recovered the bulk of a Phillip Morris shipment of 60,000 cartons hijacked in September 1981. Evidence confiscated, including a counterfeit State tax stamp, suggested that organized crime was involved.

Although ATF played an important role in the successful completion of that investigation, ATF's contribution cannot be measured solely by the number of arrests made or by the volume of contraband cigarettes seized. ATF's activities in the low-tax States have been a tremendous deterrent. Since the cigarette contraband law took effect in 1978, the mere presence of Federal agents has helped reduce illegal activities.

Last October 26, I wrote to Treasury Secretary Donald T. Regan and stressed that continued enforcement of the Cigarette Contraband Act by ATF is essential to prevent organized crime from diverting badly needed State tax revenues. In response, on November 20, John M. Walker, Jr., Assistant Secretary for Enforcement and Operations, wrote that "the increase in State cigarette tax collections and Federal budgetary constraints dictate that the Treasury Department reduce the resources allocated to cigarette tax enforcement." In other words, the participation of ATF has been so successful it should be concluded. Or, we should go back to the old failed system of each State trying to follow cigarette shipments to its own State and abandon the concept of one agency working for all.

We in the high-tax States can make a persuasive case that this particular budget cut constitutes false economy. ATF, with a relatively small expenditure of about $2 million, has been able to choke off the flow of bootlegged cigarettes to New York State. But we are not alone. Thirty-four States have a stake in this issue. A relatively small Federal appropriation means a significant reduction in cigarette tax revenue losses for 70 percent of the States. If ATF limits enforcement of the Cigarette Contraband Act, a small savings for the Federal Government will jeopardize almost $400 million among the various States that have serious problems with cigarette tax evasion.

It also appears we may be facing the prospect of false economy on another level. The January 22, Kiplinger Washington letter noted that, "It would cost more at first to split up BATF than to keep it going as is."

Moreover, remember this is a crime in interstate commerce which the Federal Government properly should combat.

In a letter dated January 6, 1982, Secretary Walker informed me that "ATF's primary goal with respect to cigarette enforcement is to return control of this problem to the States and to systematically withdraw Federal resources."

He described a Treasury Department plan "wherein the ATF functions related to the contraband cigarette law will be reassigned to the U.S. Customs Service." I want to point out that customs' guards do not conduct their surveillance activities on the highways. Contraband cigarettes enter New York State via over-the-road smuggling operations, not through airports or waterfronts.

In his January 6 letter Secretary Walker said that—

> Notwithstanding the reassignment of the cigarette enforcement program to the U.S. Customs Service * * * ATF will continue to respond to requests for assistance from New York State in those cases where the enforcement problem is so complex and of such diverse nature that they are beyond State control.

I guess ATF will be available to help after the shipments arrive.

I think it is appropriate here to point out that the legislative history of the Contraband Cigarette Act makes it clear that cigarette bootlegging is not just a State and local problem. As the Senate report on the bill noted,

> * * * The interstate nature of organized cigarette bootlegging and the jurisdictional limitations of the various State investigative agencies have resulted in the States' efforts having little impact on the problem of cigarette bootlegging.

That, succinctly stated, is the reason the bill was enacted and why it should continue to be enforced.

Congress should either restore ATF funding to allow continued enforcement of the Cigarette Contraband Act or take a close look at the whole problem with a view toward acknowledging that a solution may ultimately lie in Federal legislation eliminating the extraordinary interstate tax differentials that make cigarette tax evasion so profitable.

INCREASE IN FEDERAL CIGARETTE TAX

A uniform Federal cigarette tax of 23-25 cents per pack could be collected without difficulty, as is the current 8-cent Federal tax, from the manufacturers at the source. There are less than a dozen ciagrette manufacturers in the Nation, and they remit directly to the Federal Government the current 8-cent Federal tax. The Federal Government could then distribute the additional revenues derived from a higher Federal tax to the States on some equitable basis.

Since such a proposal would only increase the rate of Federal tax, it would involve a minimal rise in administrative costs. Numerous bills were introduced in the 95th Congress to curb bootlegging and relieve the States of an administrative burden by imposing a uniform Federal tax. That concept was set aside in favor of the contraband approach embodied in Public Law 95-575.

Until Congress can reach agreement on a Federal takeover of cigarette taxes, continued Federal enforcement of the Cigarette Contraband Act is essential to augment State enforcement efforts.

Treasury officials are now saying, in effect, that they no longer have to enforce the Cigarette Contraband Act because Federal-State enforcement efforts have been so effective. At a time when the Federal Government is shunting more and more responsibilities to the States, it is unconscionable to curtail enforcement of a law, enacted by Congress, that has benefited the States by improving revenue collections from the existing cigarette tax structure.

We project that New York State cigarette tax collections will total $340 million during the current fiscal year. At a time when the Federal Government is turning over more and more responsibilities to the States, we cannot afford to lose any of that revenue. We especially can't afford to stand by while State and local revenues are diverted from Government tax coffers into the Swiss bank accounts of organized crime.

Senator, I would say one further thing about this, that for reasons best known to themselves, the officials in the Department of the Treasury announced they were no longer going to enforce the law. There was an article in the New York Times citing someone in the Treasury Department in October saying that they were not going to enforce the law.

The people who are engaged in this business, or were engaged in this business heretofore and would like to be again, are very literate people. They read the newspapers. They don't like to take risks and so forth. The result of that is that we have seen our tax revenues, cigarette taxes, go down 10 percent in January 1982 over January 1981.

Senator ABDNOR. What does that amount to in dollars?

Mr. TULLEY. That is 10 percent.

Senator ABDNOR. In dollars what is that?

Mr. TULLEY. About $6 or $7 million. We are back to the old problem that we had before. It is impossible for the States to follow these people up from North Carolina, to send our people down there. Our people have been ordered out of North Carolina by officials of North Carolina in something that has appeared on television on the national news program once. It is just impossible. It is a crime in interstate commerce. Just the very fact of the Federal presence and just watching those main highways makes such a difference in the tax collection possibilities for various States.

Thank you, Senator.

Senator ABDNOR. You said in your statement that you received a letter from Secretary Walker.

Mr. TULLEY. Yes.

BATF RESPONSE TO SPECIFIC STATE PROBLEMS

Senator ABDNOR. Notwithstanding the reassignment of the cigarette enforcement program, and so forth, what it amounts to is they would respond to specific problems or something if they had it. It sounds like at that time at least they had no intention of doing away with the BATF. Wouldn't you have to assume that?

Mr. Tulley. He said:

> Notwithstanding the reassignment of the cigarette enforcement programs to the U.S. Customs Service, ATF will continue to respond to requests for assistance from New York State in those cases where the enforcement problem is so complex and of such diverse nature that they are beyond State control.

Well, I don't know what he is saying really. The enforcement that we had and would like again is over-the-road, that they watch those certain highways that come up from Virginia, North Carolina, to the various States in the Northeast and Midwest. I don't know what he means by that because at the same time, of course, they announced——

Senator Abdnor. That January 6 letter was what, a year ago?

Mr. Tulley. No. It was much more recent. January 6.

Senator Abdnor. Of this year?

Mr. Tulley. Right.

Senator Abdnor. I guess my thought was I thought we were talking about doing away with BATF altogether. I am just wondering if you didn't have a BATF, how would you call on them. That is all.

Mr. Tulley. I don't know.

Senator Abdnor. Maybe he meant Customs. I don't know.

All right. We will go ahead and hear from the others.

Mr. Tulley. Thank you, Senator.

NEW JERSEY DIVISION OF TAXATION

STATEMENT OF J. ROBERT MURPHY, ASSISTANT DISTRICT DIRECTOR, NEW JERSEY DIVISION OF TAXATION: PAST PRESIDENT, NATIONAL TOBACCO TAX ASSOCIATION, AND NTTA CHAIRMAN, FEDERAL-STATE COORDINATING GROUP

ACCOMPANIED BY LEON ROTHENBERG, EXECUTIVE SECRETARY, NATIONAL TOBACCO TAX ASSOCIATION AND THE NATIONAL ASSOCIATION OF TAX ADMINISTRATORS

Mr. Murphy. Good afternoon. I apologize for being detained. I was late in getting down.

My name is J. Robert Murphy. I am assistant district director of the New Jersey Division of Taxation and past president of the National Tobacco Tax Association and also act as the NTTA chairman of the Federal-State Coordinating Group. I am accompanied by Leon Rothenberg, executive secretary of the National Tobacco Tax Association and the National Association of Tax Administrators, for whom I am appearing.

I am pleased and delighted to have the opportunity to testify on behalf of NTTA on a matter so important to all the States.

Senator, I will do my best not to repeat a lot of what Commissioner Tulley has indicated during his speech.

Senator Abdnor. Let me assure all of you gentlemen that your entire written statements will be in the record.

CONTRABAND CIGARETTE ENFORCEMENT FUNDING

Mr. Murphy. The National Tobacco Tax Association joins with the National Association of Tax Administrators in expressing support for an appropriation to the U.S. Treasury adequate in amount to permit the continued presence of the Federal Government in the State-Federal cooperative program against cigarette smuggling. To assure that this program will be continued, NTTA and NATA request that the appropriation be earmarked specifically for contraband cigarette enforcement.

NTTA and NATA request an earmarked appropriation for contraband cigarette enforcement in order to prevent a resurgence in cigarette smuggling and the tax revenue losses and widespread problems in law enforcement that would result. The request is made in accordance with the intent of Congress expressed in Public Law 95–575, the 1978 law which makes cigarette smuggling a Federal offense and places the responsibility for enforcing the law in the U.S. Treasury.

ACTIVITIES OF NTTA AND NATA

The National Tobacco Tax Association is an organization of the tobacco tax administrators in the tax agencies of the 50 States. The National Association of Tax Administrators is an organization whose membership consists of the tax administrators of the 50 State governments, including the State tax commissioners and directors of revenue. For many years the two organizations have addressed revenue and law enforcement problems arising from cigarette smuggling. NTTA and NATA rendered technical assistance to Congress in the development of contraband cigarette legislation. NTTA has worked closely with the Bureau of Alcohol, Tobacco and Firearms in the cooperative intergovernmental enforcement program which resulted from the passage of Public Law 95–575.

In 1981, NTTA and NATA adopted resolutions urging the administration and Congress to continue adequate funding to maintain a BATF presence in contraband cigarette enforcement in order to prevent a resurgence of interstate cigarette smuggling. Copies of those resolutions are submitted with this statement.

Public Law 95–575 makes it a violation of Federal law to transport 60,000 or more cigarettes across State lines for the purpose of evading State cigarette taxes. Congress passed this law, with the States' strong support, after cigarette smuggling had increased rapidly for more than a decade. Prior to the passage of the law, the Advisory Commission on Intergovernmental Relations reported that cigarette smuggling was a problem in about one-half of the States, that State revenue losses approached $400 million annually, and that it involved interstate organized crime operations with which local governments could not deal on their own effectively.

REASONS FOR REDUCTION IN CIGARETTE SMUGGLING

The passage of Public Law 95–575 in 1978 and the consequent cooperative State-Federal enforcement effort have reduced cigarette smuggling sharply. Since 1978, the Bureau of Alcohol, Tobacco and Firearms and State tax agencies, working in cooperation, have discovered major smuggling violations and were successful in criminal cases and civil seizures. As a consequence of the Federal law and the Federal enforcement presence, cigarette smuggling declined from its former volume as many suppliers of bootleg cigarettes have ceased operation rather than confront Federal authorities, and many bootleggers have quit, discouraged by the prospect of Federal conviction and penalties.

There is substantial evidence that Public Law 95–575 has had the impact Congress intended. In the years when cigarette bootlegging was growing rapidly, cigarette tax collections in the States which served as a source of bootleg cigarettes rose much more rapidly than the national average, because bootleggers were buying tax-paid cigarettes in the low-tax States cheaply and selling them at huge profits in high-tax States. Conversely, in the high-tax States—and the majority of States impose a tax of 13-cents-per-pack or more—the trend in cigarette tax collections lagged sharply behind the national average.

Since 1978, apparent cigarette consumption in the low-tax States has dropped while in the high-tax States it has run well ahead of the national average. This indicates the law in question has had an impact. More specifically, States in which cigarette bootlegging violations had been massive report a very different situation, and where smuggling was once a runaway problem, it has been subject to progressively tighter control.

ADVANTAGES TO SMUGGLERS IF BATF DISBANDED

If the Federal enforcement funds were eliminated, we might bring out the fact that it is near certainty that if the Federal Government no longer participated in the State-Federal cooperative effort against cigarette smuggling, the gains which have thus far been achieved would be quickly lost. Here are some of the reasons:

One, cigarette smugglers would become quickly aware of the elimination of the Federal presence. The press has given considerable publicity to cigarette smuggling, and the pending dissolution of the Bureau of Alcohol, Tobacco and Firearms and the possible elimination of a specific appropriation for contraband cigarette enforcement has already been reported extensively. As recently as last week a New York television station, channel 2, on consecutive evenings reported an exposé on cigarette smuggling.

Two, from past experience, cigarette bootleggers know that the States are severely handicapped in dealing with cigarette smuggling because of its interstate character and that effective enforcement is possible only if Federal agents are involved in this effort. Many bootleggers curtailed or ceased operations as soon as the Federal law was passed. Eliminating the appropriation for enforcing the law, in effect, would be an invitation for bootleggers to resume their operations.

Three, bootleggers who have ceased operations could easily return to their illicit activities. Cigarette smuggling is a lucrative field. Little capital investment is required for cigarette smuggling. Sufficient capital to purchase cigarettes in low-tax States and a rented truck is virtually all that is needed to do business. Since only a few years have elapsed since the passage of Public Law 95–575, bootleggers would have little difficulty in reestablishing their illicit sales outlets.

Four, the incentive for cigarette smuggling—the large profits to be made from purchasing cigarettes in low-tax States and selling them in high-tax States—is still present and in fact may be intensified in the next few years. Currently, among the States, cigarette tax rates range from 2-cents-per-pack to 27-cents-per-pack—State-local. The wide range reflects essentially the pressures on State government for added revenues and the tobacco growing States' retention of low cigarette tax rates.

INVOLVEMENT OF ORGANIZED CRIME

We must concede that organized crime is involved in cigarette smuggling, and there is ample evidence available it is not a victimless crime. We believe that the contraband crime activities, if continued, will undo all that has been accomplished since the enactment of the contraband law. Prior to the enactment of the contraband law, many businesses in high-tax States suffered financial losses because they could not compete with the violators. Some went bankrupt. There was unemployment. Some who remained in business joined in the illicit traffic. Again, without adequate appropriation, business in the high-tax States could fall into financial problems which they do not need in these bad times.

The gap may widen in the next few years because most States have serious budgetary problems, and the administration's New Federalism program contemplates relinquishing the Federal Government's 8-cents-per-pack tax to permit the States' more extensive use of cigarette taxes to compensate them for revenue that would be lost through the elimination of certain Federal grants-in-aid programs.

In effect, by eliminating the appropriation for contraband cigarette enforcement and by adopting a new federalism program which would result in the States' more extensive use of cigarette taxes, the Federal Government would encourage a substantial increase in cigarette smuggling by increasing the profits while diminishing the risks.

NTTA and NATA suggest that a consistent Federal policy to enable the States to use their own revenue resources more effectively should include an appropriation for contraband cigarette enforcement in order to prevent a loss in revenue from illicit interstate activities which cannot be controlled without Federal support.

Our organizations would be guided by Treasury's evaluations of its needs in this area. However, they respectively request that the provision for the enforcement of Public Law 95-575 be made in the form of an earmarked appropriation to assure that personnel will be available to continue the effort against cigarette smuggling and that the progress made toward eliminating this illicit activity will not be lost.

The States will continue to cooperate with the Federal agency assigned the responsibility to enforce the law. NTTA and NATA express their appreciation to the subcommittee for this opportunity to convey their views on this important matter. Thank you very much, Senator.

NTTA RESOLUTION

Senator Abdnor. Thank you, Mr. Murphy. The resolution adopted by NTTA will be inserted in the record at this point.

[The information follows:]

RESOLUTION

UNANIMOUSLY ADOPTED BY THE NATIONAL TOBACCO TAX ASSOCIATION

Whereas Congress, through the enactment of P.L. 95-575, the Contraband Cigarette Law, took a major step in the reduction of cigarette bootlegging, and

Whereas prior to the participation of the Bureau of Alcohol, Tobacco and Firearms in contraband cigarette enforcement, the state revenue loss due to cigarette bootlegging was estimated at $400 million annually, and

Whereas the Bureau of Alcohol, Tobacco and Firearms has made important contributions towards this reduction in cigarette bootlegging during the past two years, and

Whereas the proposed phasout of the appropriation to the Bureau of Alcohol, Tobacco and Firearms for contraband cigarette enforcement may furnish the stimulus for a sharp revival in cigarette bootlegging, and

Whereas such a development would result in a significant revenue loss to the states and would create serious law enforcement problems for state and local governments, and

Whereas because of the wholly interstate character of cigarette bootlegging, the states could not compensate for the loss of federal assistance in this area, even with increased spending: Now, therefore, be it

Resolved, That the National Tobacco Tax Association urge the Administration and Congress to continue adequate funding to the Bureau of Alcohol, Tobacco and Firearms to maintain an ATF presence in contraband cigarette enforcement to prevent a resurgence of interstate cigarette smuggling.

Whereas Congress, through the enactment of P. L. 95-575, the Contraband Cigarette Law, took a major step toward the elimination of cigarette bootlegging, and

Whereas prior to the enactment of P. L. 95-575, and the participation of the Bureau of Alcohol, Tobacco and Firearms in contraband cigarette enforcement, the state revenue loss due to cigarette bootlegging was estimated at $400 million annually, and

Whereas the Bureau of Alcohol, Tobacco and Firearms has made important contributions towards the reduction in cigarette bootlegging during the past two years, and

Whereas a complete phaseout of the appropriation to the Bureau of Alcohol, Tobacco and Firearms for contraband cigarette enforcement—which has been suggested as part of the federal austerity program—may furnish the stimulus for a sharp revival in cigarette bootlegging, and

Whereas such a development would result in a significant revenue loss to the states, many times the amount that would be appropriated for contraband cigarette enforcement, and would create serious law enforcement problems for state and local governments, and

Whereas because of the wholly interstate character of cigarette bootlegging, the states could not compensate for the loss of federal assistance in this area, even with increased spending: Now, therefore, be it

Resolved, That the National Association of Tax Administrators urge the Administration and Congress to provide adequate funding to the Bureau of Alcohol, Tobacco and Firearms to maintain an ATF presence in contraband cigarette enforcement to ensure that major interstate cigarette smuggling will not recur.

NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS [NATD]

STATEMENT OF LOUIS H. EHRLICH, JR., BOARD CHAIRMAN, ROTHENBERG & SCHLOSS, INC., AND CHAIRMAN, COMMITTEE ON LEGISLATION AND TAXATION, NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS (NATD)

ENFORCEMENT OF CIGARETTE CONTRABAND LAW

Senator **ABDNOR**. Mr. Ehrlich?

Mr. **EHRLICH**. Senator Abdnor, I appreciate being invited to this hearing. My name is Louis H. Ehrlich, Jr. I am chairman of the board, Rothenberg & Schloss, Inc., Kansas City, Mo. I appear as chairman of the committee on legislation and taxation, National Association of Tobacco Distributors [NATD], representing the 1,370 primary tobacco wholesalers, whose 12,000 salesmen canvass and supply the 1,475,000 retail outlets selling tobacco products throughout the United States. It is estimated that members of our trade and industry annually market cigarettes with a wholesale value of $12,395,403,203.

We are deeply concerned and disturbed both as to the plan to disband the Bureau of Alcohol, Tobacco and Firearms [A.T. & F.] and its present approved appropriation providing no funding for the enforcement of the cigarette contraband law, Public Law 95-575. As a consequence, enforcement of the cigarette contraband law is at a standstill.

Continued lack of enforcement can only mean a resurgence of cigarette bootlegging in interstate commerce with the resulting potential loss of tax revenue both to the Federal Government and to the States, which will be powerless to combat it, as well as irreparable damage to tobacco wholesalers in income through the loss of business or by being forced out of business.

In my statement presented to the Advisory Commission on Intergovernmental Relations [ACIR] at its hearing on December 16, 1976, I stated:

> We therefore conclude cigarette bootlegging, because of its complex nature, cannot be controlled nor eliminated at the State level and therefore this Federal contraband cigarette legislation must be enacted.

The ACIR in its May 1977 report following this hearing said:

> Cigarette smuggling is an interstate problem because organized crime and other bootleggers take advantage of the States' limited jurisdiction, and an effective solution requires Federal legislation making interstate transportation of illicit cigarettes a Federal offense.
>
> The Commission believes that the States can make a greater effort to enforce cigarette tax laws, but that the problem of cigarette bootlegging cannot be effectively resolved without Federal assistance. The recommendations that follow are designed to encourage joint Federal-State cooperative actions that hopefully will result in a significantly reduced level of cigarette bootlegging.

COST TO STATES FROM CIGARETTE BOOTLEGGING

The ACIR report showed as of July 1, 1976 cigarette bootlegging was national in scope and not limited to the Northeastern States. Exhibit A is attached to my statement.

Prior to the enactment of the cigarette contraband law, it was estimated illicit cigarette bootlegging was costing the States and local taxing authorities approximately $400 million in revenue annually. I would like to correct my statement. Due to a typographical error, that reads $4 million rather than $400 million. I am not used to these large figures, Senator.

In addition, legitimate business—the tobacco wholesalers and retailers—were sustaining losses in the millions of dollars, finding it impossible to compete with organized crime which paid no taxes and was not subject to normal business expenses. Through their illegal profits, these criminal elements were able to extend their tentacles into other areas such as narcotics, prostitution, and related gambling activities from which the Federal Government and the

States received no tax revenue. It was concern for this that led Congress to pass the cigarette contraband law.

Enforcement of the cigarette contraband law was meant to be a cooperative effort between the States and the Federal Government. Since its enactment, A.T. & F. and the States have successfully cooperated together toward reducing cigarette bootlegging. A.T. & F. has provided helpful training programs for State officials and their law enforcement agents. Through surveillance A.T. & F. has been able to follow and track illicit shipments from State to State and provide information which has led to successful State-Federal prosecutions with diminished cigarette bootlegging in interstate commerce. As a corollary, tax revenue particularly to the Northeastern States has increased and decreased for the originating low-tax States. Without the involvement of A.T. & F., this would not have been possible.

Let us now look to the future without Federal funding of the cigarette contraband law. If the States, prior to its enactment, could not control cigarette bootlegging, how can they be expected to do so now? With the loss of Federal revenue from the retrenchment of Federal programs, the States more than ever will be in need of greatly increased revenue. "Missouri looking at $108.1 million Federal cutback" read the headlines in the February 16 Kansas City Star. One of the sources certainly looked to will be increased cigarette taxes.

CIGARETTE TAX INCREASE IN MISSOURI

In Missouri a bill is pending to increase the cigarette tax from 9 cents to 16 cents and to allow the counties to tack an additional 1 to 5 cents tax, which would make the tax per pack of cigarettes in Kansas City 21 cents including the county tax. Since the North Carolina tax is only 2 cents a pack and in Kentucky, a bordering State, 3 cents per pack, is it not plausible to believe this will be an open invitation to cigarette bootlegging? And so it will be throughout the United States.

It is estimated Missouri is losing $1 to $2 million annually to cigarette bootlegging. Yet our Governor Bond recently said in answer to my question, "Bootlegging of cigarettes from other States is not presently a problem." I submit it will be a problem and Missouri will not be able to cope with it without Federal aid through enforcement of the cigarette contraband law by A.T. & F. I should add, not only Missouri but many of the 50 States.

At the annual meeting of the National Tobacco Tax Association in October 1980, Howard Anderson, director, alcohol, tobacco and special tax division, Minnesota Department of Revenue, reporting on tax evasion in the Central States, said:

> There is no doubt in the minds of any of the administrators that the apparent reduction of smuggling activity is a direct result of passage of the Federal contraband bill and the involvement of A.T. & F. in the cigarette field.

RECOMMENDATIONS

With this background and statistical data as chairman of the National Association of Tobacco Distributors, Committee on Legislation and Taxation:

One. I urge reconsideration of the proposed dismantling of the A.T. & F. and restoration of its requested appropriation of $2.5 million to fund enforcement of the cigarette contraband law. Is it worth a mere $2.5 million savings in the Federal budget to undermine the stability of the wholesale tobacco industry with staggering revenue loss to the States? To me it would be an economic misadventure. And in conclusion I submit:

Two. Without Federal assistance, illicit cigarette bootlegging in interstate commerce will flourish, the States being powerless to combat it since the authority of State enforcement officials does not extend beyond the borders of their respective States.

My colleague, Mr. Murphy, points out to me something I said was incorrect. It would be in excess of $400 million.

Three. The well-being of the tobacco wholesaler is dependent on the Federal contraband cigarette law being enforced by A.T. & F. Without it, they are faced with loss of income, possibly being forced out of business or bankruptcy.

Four. Since Congress has seen the need for the cigarette contraband law, it should now appropriate the funds necessary for its enforcement as called for by Senators Moynihan and D'Amato.

Five. To your attention, the little booklet recently prepared by the NATD, "A Disastrous Story," which I attach as exhibit B.

I would like to ask your permission to add to my statement as exhibit C the resolution which was adopted by the members of the National Association of Tobacco Distributors at its national convention last April, which reads as follows:

> The cigarette contraband law, P. L. 95-575, is already beginning to justify the expectation of its advocates. We applaud the harmonious cooperation among the States and the Federal Government which alone ensures effective enforcement of this statute, thus redounding to the enhancement of State revenues. We note with apprehension and concern the recommendations of the Office of Management and Budget that the Bureau of Alcohol, Tobacco and Firearms' program for contraband cigarette enforcement be phased out by the end of the Federal fiscal year 1982 and that such recommendation has been approved by the U.S. Treasury Department. We are fearful this will lead to a revival of cigarette bootlegging, with a concomitant loss of revenue to legitimate cigarette distributors and to the several States. The withdrawal of Federal support for State and local law enforcement in this area would create serious problems, and we urge reinstatement of budgeting provisions for the enforcement of the federally-mandated anti-contraband cigarette program.

Now, Senator, with your permission, I would like to add a seventh conclusion in response to the suggestion of Commissioner Tulley that there be a uniform Federal cigarette tax.

UNIFORM FEDERAL TAX URGED

We at the NATD have opposed such a uniform Federal cigarette tax. I appeared as an opponent against it at the House committee hearing. We are not in favor of it because from the standpoint of the wholesaler, it would mean increased capital, which many of them can ill afford. It would be loss of revenue from the State tax discount and from the standpoint of the lower tax States. I don't mean North Carolina, but it would apply to North Carolina and Kentucky. But for a State like Missouri with a 9-cent tax, it would mean increased taxes at the present rate of tax to the State of Missouri and to the residents of Missouri. The residents of Missouri under the present Missouri tax would be paying a higher tax than under the present State law.

With that, we would not be in favor of the uniform Federal cigarette tax. I hope I have been helpful to you. Thank you very, very much.

ATTACHED INFORMATION

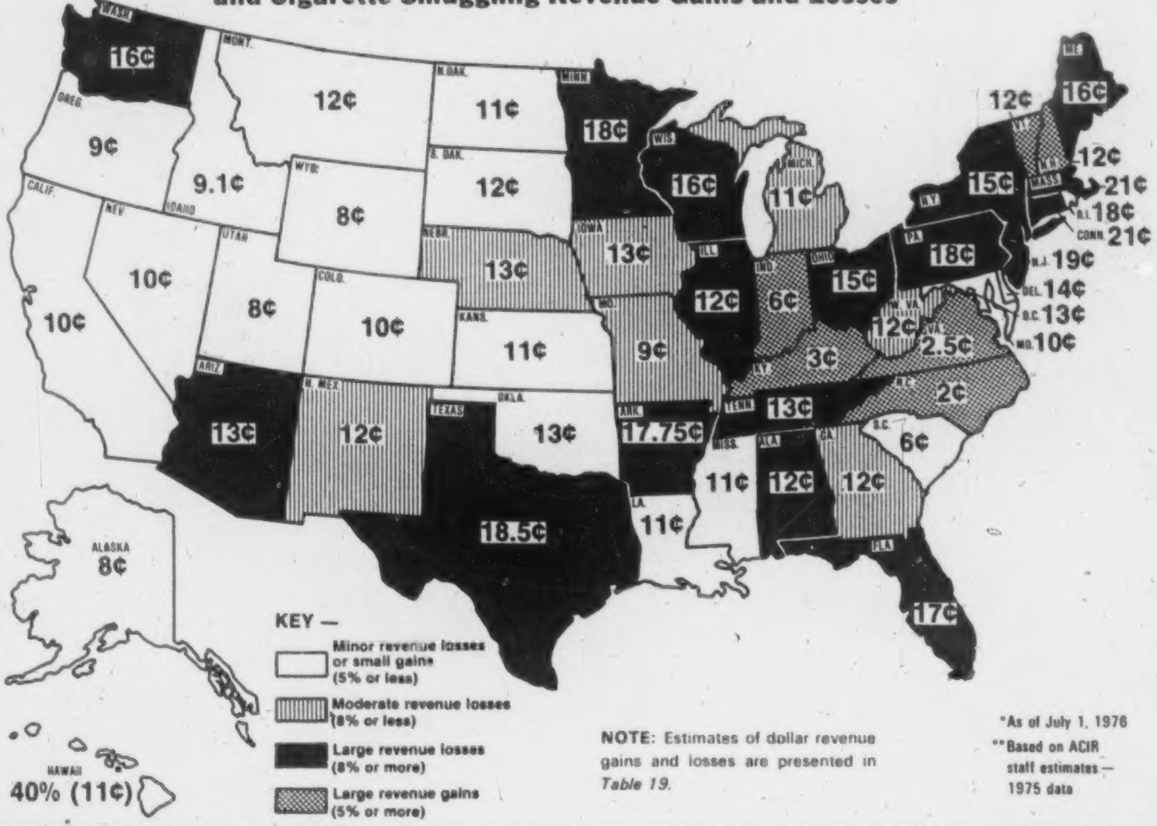
Senator **Abdnor**. Thank you. We will put the resolution in the record, too.

Mr. **Ehrlich**. Thank you.

[The information follows:]

EXHIBIT A

State Cigarette Tax Rates* and Cigarette Smuggling Revenue Gains and Losses**


WASH. 16¢
OREG. 9¢
CALIF. 10¢
IDAHO 9.1¢
NEV. 10¢
MONT. 12¢
WYO. 8¢
UTAH 8¢
COLO. 10¢
ARIZ. 13¢
N. MEX. 12¢
N. DAK. 11¢
S. DAK. 12¢
NEBR. 13¢
KANS. 11¢
OKLA. 13¢
TEXAS 18.5¢
MINN. 18¢
IOWA 13¢
MO. 9¢
ARK. 17.75¢
LA. 11¢
WIS. 16¢
ILL. 12¢
MICH. 11¢
IND. 6¢
OHIO 15¢
KY. 3¢
TENN. 13¢
MISS. 11¢
ALA. 12¢
GA. 12¢
FLA. 17¢
S.C. 6¢
N.C. 2¢
VA. 2.5¢
W. VA. 12¢
PA. 18¢
N.Y. 15¢
VT. 12¢
N.H. 12¢
ME. 16¢
MASS. 21¢
R.I. 18¢
CONN. 21¢
N.J. 19¢
DEL. 14¢
D.C. 13¢
MD. 10¢
ALASKA 8¢
HAWAII 40% (11¢)
KEY —
Minor revenue losses or small gains (5% or less)
Moderate revenue losses (8% or less)
Large revenue losses (8% or more)
Large revenue gains (5% or more)

NOTE: Estimates of dollar revenue gains and losses are presented in *Table 19.*

*As of July 1, 1976

**Based on ACIR staff estimates — 1975 data

EXHIBIT B

A Disastrous Story

It's Really A Crime!

BEFORE PASSAGE OF THE FEDERAL CONTRABAND CIGARETTE ACT......

WIDESPREAD CRIME...THUGS ARE EVERYWHERE!

Contrary to popular opinion, smuggling is not limited to the states of the Northeast. Contraband cigarettes can be found virtually everywhere in the United States. Wherever there is substantial profit to be made from the differences of tobacco taxes of two states, contraband cigarettes can be found in remarkable amounts. Often, the profits are made even greater by hijacking truckloads of cigarettes. Sometimes the drivers are released unharmed; many times they are not. The victims are often murdered.

HUGE UNDERWORLD OPERATION...

BOOTLEGGING IS BIG BUSINESS!

Before the Contraband Cigarette Law was approved by Congress in late-1978, conservative industry estimates placed the loss to the 50 states and local tax authorities in excess of $400 million annually in tax revenue. In addition, untold millions of dollars were lost by legitimate businesses (tobacco wholesalers and retailers) who were undercut by organized crime's illicit cigarette sales. According to Newsday, a Long Island, N.Y., newspaper which conducted a 4-month investigation of cigarette smuggling, more than one billion packs were bootlegged in the 9-state area of the Northeast alone! This 1-year period of illicit profits brought the "Mob" more than $100 million!

VIOLENCE & BLOODSHED...

THE MOB IS USED TO GETTING ITS WAY!

Where illicit profits run high, the stakes beget violence. Hijackings, rivalries among organized crime "families," coercion of honest tobacco wholesalers and retailers, and "shoot-outs" with law-enforcement agents were more than just possibilities before enactment of the Cigarette Contraband Law ...they were real-life happenings. According to New York State Senator Roy M. Goodman at a press conference in 1976, the cigarette distribution industry had become "a jungle in which organized crime preys upon legitimate dealers." Goodman added that "the racketeering tactics of cigarette bootleggers have created a climate of terror in which hundreds of legitimate dealers are being confronted daily with the risks and dangers of personal violence. There must be a major revitalization of law enforcement in this area to protect innocent businessmen from brutalization and the destruction of an industry..."

POISONED ECONOMY...

BOOTLEGGING KILLS BUSINESSES, JOBS!

Wherever the Mob has muscled in, tobacco distributors and retailers have suffered. Cigarette bootlegging is hardly the "victimless" crime that some have termed it.

Citing Roy M. Goodman again: "Legitimate wholesalers have lost more than $2 billion in sales during the last decade. Bootlegging operations have slashed more than 2200 jobs in the trade in New York, virtually eliminating the "Mom and Pop" stores that were once a mainstay of neighborhoods."

Wholesalers found their warehouse insurance rising as a result of bootleg-inspired robberies. Manufacturers, similarly, found their trucking insurance skyrocketing.

Smuggling robberies got out of hand. Trucking companies, themselves, voiced alarm over prevailing patterns, with one major company (Andrews & Pierce Inc. of North Abbington, Mass.), for example, halting its cigarette transporting, which had represented about 3 percent of its business.

RAMPANT CORRUPTION...

BRIBERY BUSTS PUBLIC TRUST!

Where enormous profits are illicitly made, bribe money flows freely. Cigarette contraband provides the cash to tempt our elected and appointed officials to break their public trust. A December 15, 1975 editorial from the Philadelphia Inquirer commented pointedly on this issue:

> "The real problem is that cigarette smuggling is corrupting Pennsylvania's political establishment. The most glaring manifestation of this being--to date--the case of Philadelphia Judge Vito Pisciotta (who) was convicted last month of using the profits from a cigarette smuggling scheme to 'buy' a judgeship. Three State cigarette agents have been indicted and are awaiting trial in the same case."

Another flagrant example is one cited in February 1976 by Virginia House of Delegates Representative Mary A. Marshall. One agent of the Northern Virginia Cigarette tax Board, she said, had been the subject of four bribery attempts and three murder attempts.

BUSINESS SEDUCTION...

TRADESMEN ALSO CORRUPTED!

The same temptation that seduces government and law enforcement officials also lures otherwise honest businessmen. A 1976 report by the New York State Special Tax Force on Cigarette Bootlegging and the Cigarette Tax noted: "...untaxed cigarettes are being increasingly sold in legitimate retail outlets. In other words, more and more business men and women, who are law-abiding in other respects, have become law-violators by evading the cigarette tax. Perhaps most tragic, (they) are subjecting themselves to arrest and criminal prosecution."

In 1977, Joseph Kolodny, managing director of the National Association of Tobacco Distributors, presented a statement to the Subcommittee on Criminal Laws in which he recounted how "a well-dressed individual walked into the office of an established wholesaler and offered to purchase for cash a substantial quantity of unstamped cigarettes to be shipped through the Panama Canal to a destination in New York State. The sale was not consummated as the State of California would not license it, indicating underworld implications."

An example illustrating both the corruption of a tobacco wholesaler and the geographical range of cigarette bootlegging is evident in the case of a former Kansas City cigarette distributor who was named in a 42-count indictment of smuggling cigarettes from North Carolina and Oklahoma into Missouri, Kansas, Nebraska and Texas without payment of taxes to the states and localities affected.

Moral weakness is not always the cause of a tobacco tradesman gone wrong. In many cases, organized crime has infiltrated legitimate businesses by threatening owners and their families with physical harm. Others have seen "accidental" damage to their goods and equipment before succumbing to "partnerships" with underworld lords.

CRIME NETWORK...

BOOTLEGGING FUNDS OTHER RACKETS!

Investigations by various state law enforcement agencies have concluded that cigarette bootlegging generates huge pools of profit that are used by organized crime to finance other illegal operations, such as drugs, loan sharking, gambling and prostitution. Some law enforcement officials consider the strengthening of organized crime by cigarette smuggling profits and the demoralization of law-abiding people more important than economic losses.

CIGARETTE SMUGGLING HIT ITS PEAK IN 1978,

AND THEN.......

FEDERAL LAW ENFORCEMENT AGENTS

CRACK DOWN ON CIGARETTE SMUGGLERS

With the Federal Contraband Cigarette Act approved by Congress on October 15, 1978, and the responsibility of its enforcement given to the Department of Treasury, the war on organized crime's cigarette smuggling activities began. Rep. Elizabeth Holtzman (Dem.,N.Y.), the main sponsor of the bill, declared "We now have an effective tool to fight a serious national problem."

The Bureau of Alcohol, Tobacco and Firearms quickly went into action, and in March 1979, Treasury agents in cooperation with New York State investigators seized more than one million cigarettes and made three arrests.. G.R. Dickerson, director of BATF, described the action as "the first round in our campaign against the kingpins and couriers of a multi-million-dollar racket that defrauds state and local governments." In this case, federal and state officers from North Carolina, Virginia and New York cooperated in the investigation that led to the arrests. This unprecedented alliance of law enforcement authorities would not have been possible without the federal law and federal enforcement.

Other arrests followed in rapid succession. In April 1979, BATF made a similar arrest. Two men were taken into custody and again over one million cigarettes were seized. This time, the arrest was made in downtown Washington, D.C. during the height of the evening rush hour. Progress was made in many other states, too. Arrests and confiscations were made in New York, Rhode Island, Pennsylvania and Connecticut. For the first time, federal enforcement became visible not only in the northeastern corridor of the country, but also in the midwest, southwest and northwest states. The number of arrests that followed as a result were directly attributable to the involvement of federal law enforcement authorities.

As federal presence increased, instances of violence ebbed. State tax revenues grew as cigarette smuggling waned. Law and order was taking control again. Normalcy was returning to the legitimate tobacco wholesale and retail industry.

The boom was lowered, however, in October 1981, when the announcement was made that BATF was phasing out its successful effort to fight cigarette smuggling. "Budget priorities" and the conclusion that smuggling was not a "major problem" were cited as reasons for the program's end. (In early November, however, The New York Times ran a 12-paragraph story headed "Cigarette Tax Raiders Seize Three With 44,000 Cartons," about an arrest made in western New York. Translated into cigarettes: 8,800,000!)

Those qualified to speak authoritatively on the matter were quick to dispute the minimization of cigarette smuggling's importance. New York State Tax Commissioner James Tully noted that his state's cigarette tax losses before and after BATF's involvement went from about $70 million down to $28 million. The difference, Tully emphasized, was due largely to BATF enforcement. The New York Daily News, usually a vocal supporter of the Reagan administration, had this to say in its November 9, 1981 editorial:

"We argued recently in this space that the Reagan administration is making a big mistake in trying to kill the federal campaign against the bootlegging of illegal cigarettes. The argument may have appeared a bit parochial in the White House's eyes, however, since our contention was that the cut would cost New York State $50 million in lost tax revenues.

"But now the Advisory Commission on Intergovernmental Relations has come up with figures that show a lot more states than New York would suffer heavy financial losses if the feds butt out of the bootlegging battle. Texas, for example, would lose $43 million and Florida, nearly $36 million. All told, 34 states have a stake of one size or another in the issue.

"Armed with those impressive statistics, New York's two senators, Daniel P. Moynihan and Alfonse D'Amato, will lead a drive in the Senate this week to restore the missing bootleg funds to the budget of the Bureau of Alcohol, Tobacco and Firearms. How much is involved? A mere $2 million. Considering that such a relatively small amount will buy such huge benefits for 70% of the states, we'd say the Senate course is clear--and that the Reagan team would be smart to allow the money to go through."

The point is clear--no one but the criminals involved will benefit from ending federal law enforcement of cigarette smuggling. No one. Not the states and localities with tax losses. Not legitimate wholesalers and retailers driven out of business. Not law-abiding businesspeople coerced into breaking the law. Not the thousands of workers who have lost their jobs. Not the multitude of small shopkeepers threatened with bodily harm. No one but the criminals.

And the price for federal enforcement? A mere fraction of the $400 million to one million dollars or more that will circulate legally as an outgrowth of federal enforcement.

One final thought:

If the states weren't able to check cigarette smuggling in interstate commerce before federal enforcement, how will they be able to now?

Indeed, when laws are not enforced, what are we as private citizens to do?

# # #

EXHIBIT "C"

The Contraband Cigarette Law (Public Law 95-575, October 15, 1978) is already beginning to justify the expectation of its advocates. We applaud the harmonious cooperation among the states and the federal government which alone insures effective enforcement of this statute, thus redounding to the enhancement of state revenues.

We note with apprehension and concern the recommendations of the Office of Management and Budget that the Bureau of Alcohol, Tobacco and Firearms program for contraband cigarette enforcement be phased out by the end of federal fiscal year 1982 and that such recommendation has been approved by the United States Treasury Department. We are fearful that this will lead to a revival of cigarette bootlegging with a concomitant loss of revenue to legitimate tobacco distributors and to the several states. The withdrawal of federal support for state and local law enforcement in this area would create serious problems and we urge reinstatement of budgeting provisions for the enforcement of the federally mandated anti-contraband cigarette programs.

Resolution adopted by the membership at NATD annual meeting April 29, 1981.

RAPID CITY, S. DAK., WATER

Mr. **Ehrlich**. I would like to add one thing, too, if I may, off the record. That is I read in the Kansas City Star, and unfortunately I did it on the plane and I don't have a copy of it, quite a feature article on the water that is being distributed out of Rapid City, which I can't think of the man's name but whom I think you are familiar with. I would like to add when that story was on "60 Minutes" a year ago, I bought two bottles of that water but as yet I have not used it. So what I have said is not affected. You know what I am talking about.

Senator **Abdnor**. I certainly do.

Mr. **Ehrlich**. Thank you very much.

Senator **Abdnor**. We urge you to try it sometime as long as you invested in it. Thank you.

UNIFORM TAX LAW

Wouldn't the uniform tax that you oppose so strenuously—I guess I lost it there, why it would be harmful to a place like Missouri. I realize it may bring in more money for North Carolina.

Mr. **Ehrlich**. And to New York. It would bring them more money because they are losing that money to cigarette contraband now. With their high tax rate, I think, if I recall correctly, and that was 4 or 5 years ago, the law was based on the higher rate of tax rather than a lower rate of tax. So what New York would be losing would be made up by that higher rate of Federal excise tax.

Senator **Abdnor**. It would certainly destroy any incentive to smoke, wouldn't it?

Mr. **Ehrlich**. It would. But from the standpoint of the other States, they would be—the amount that they are losing does not compare to New York's loss, and that would not be anywhere near what the residents of those States would have to pay where you have, say, a 10-cent tax.

Senator **Abdnor**. I just thought we would be saving the legislature a lot of problems. They hate to make those kinds of votes that make for more taxes.

Mr. **Ehrlich**. I think there is another thing to remember, that the cigarette tax—and I think the Governor of Vermont pointed that out when President Reagan wanted to increase the Federal excise tax, that the cigarette tax is a prerogative of the States and not the Federal Government. I think that would be another reason to oppose it.

Senator **Abdnor**. I won't argue with that.

Mr. **Murphy**. Senator, may I comment on that aspect, if I may.

Senator **Abdnor**. Certainly.

Mr. **Murphy**. This proposal relative to the uniform tax rate has been discussed over the years by the tax administrators. Although it may be on the surface an ideal situation, I believe that we should take into consideration that at the present time, time is of the essence, and that to get legislation through 50 States to come up with a uniform tax would be extremely difficult when you consider the wide variance of 2 cents to 27 cents in the tax rates throughout the country. Many of the high-tax rate States would not be interested in reducing their tax to 23, or whatever the case basically might be, or 19, as we have in the State of New Jersey. Many of the low-tax rate States would have an awful lot of constituents complaining to their legislatures if they started to increase the tax when they indicate it is in order to carry a burden for the high-tax rate States.

Senator **Abdnor**. I suppose most States are looking for money. I am not trying to promote it.

LOW TAX RATES IN VIRGINIA AND THE CAROLINAS

Let me ask you, what is the big reason for South Carolina, North Carolina and Virginia to keep their taxes so low? Is it because they raise the tobacco?

Mr. **Murphy**. They are tobacco States in the first instance, Senator, and the second thing is by keeping their tax rate low, they have been very successful in having people passing through and coming down to their State to purchase cigarettes. I think that their average consumption rate is very, very high when you consider the number of the population in their State.

TOTAL REVENUES OF HIGH RATE STATES

Senator **Abdnor**. How do their total revenues yearly compare with the States of the higher rate? I mean, if you put it on a per capita basis, do they still retain——

Mr. **Murphy**. If I may, I would like to have Mr. Rothenberg, the executive director of NTTA, who might have that information easily available, whereas I do not, answer that question.

Mr. **Rothenberg**. I do not have specific figures on hand, but the per capita cigarette consumption suggested by tax collections in such States as Kentucky, Virginia, and North Carolina is very much above the national average. In some of the high tax States we happen to be discussing this afternoon—some Northeastern States, and some Midwestern States—the per capita is well below the national average.

Senator **Abdnor**. When we get all through at the end of the year, the revenues will be just as great as those high States; is that right?

REVENUES IN LOW RATE STATES

Mr. **Rothenberg**. No. Well, since the passage of Public Law 95-575, there has been a decline in the per capita consumption of the tobacco, low-tax States and there has been a rise in the higher-tax States.

The absolute amount of cigarette tax collections does relate to the tax rate and the population of the State. So it is not possible to easily compare the two. But in terms of the per capita effect, putting the population on the same basis in all States, you have a very impressive high per capita in the tobacco growing States.

INCREASED MANPOWER IN STATES

Senator **Abdnor**. This morning we have testimony from the liquor industry. I think they have pointed out quite well the problems there, the enforcement problems, and the area that really only a Federal agency could probably handle. What is there in the tobacco industry tax? I realize it would be very costly to the States to put on the extra manpower. But can you say that even though you had all the manpower you needed, you still would have to have Federal agents to do some of this?

Mr. **Rothenberg**. Yes, you would, because of the interstate character of cigarette bootlegging. The authority of the State in cigarette taxation ends at the State borderline. The effectiveness of Public Law 95-575 rests with Federal law enforcement by making the offense the crossing of the State border with unstamped cigarettes for the purpose of evading cigarette taxes. The State cigarette tax agent operates within his own borders. He does not have the authority that the ATF agents have had since the passage of Public Law 95-575.

Senator **Abdnor**. Do you agree with that pretty well?

Mr. **Ehrlich**. Yes, sir. That is in my statement. That is where you have to have the surveillance to track the cigarettes from one State to another.

I would like to add one thing in response to your question to Mr. Murphy. That is I believe historically North Carolina as a low-tax State has flourished from the standpoint of revenues from other States, because there used to be a very large mail-order business, and you may be aware of it, in North Carolina which was effectively stopped by the Jenkins Act which put the mail order concern out of business. It then became a Federal offense to ship cigarettes to a consumer from the State of North Carolina where the State of destination tax was not paid.

That does not apply to cigarette bootlegging because that is an entirely different act, and that is enforced by the postal authorities. There is a case where the Federal Government has been most effective in wiping out, you can say, cigarette purchases by mail due to the Jenkins Act.

It has been the same thing here, where the Federal Government has been able to come in through A.T. & F. and start in the originating State and track those shipments to the State of final destination, where the tax is not paid, because that State cannot go down into North Carolina and watch the shipment originate. They don't have the information. The States that it comes through naturally are not too interested in tracking that shipment. So the only source that can do that would be an agency of the Federal Government. That is where A.T. & F. has done so well. Their agents, from what I have read and from what I have heard and seen, are really outstanding in that field.

Now, you may say can't some other agency do it? Possibly they can. I only say that we know what A.T. & F. has done and can do, and we would be very fearful to transfer any of its acts to some other agency that has not yet proven what it can do.

AMOUNT OF CIGARETTES CONSTITUTING BOOTLEGGING

Senator **Abdnor**. What amount of tobacco constitutes bootlegging if you had it in a vehicle coming across?

Mr. **Ehrlich**. I think it is 60,000 cigarettes. The Federal act covers three cases or more of cigarettes, which would be 60,000 cigarettes.

Senator **Abdnor**. When they are crossing State lines, do they just have it in their vehicle?

Mr. **Ehrlich**. The way it has been done is they would send down these trailer loads and the trailer loads would pick up the cigarettes. The figures that I have read show that the person who sent the trailer load down would profit to the extent of about $60,000 per trailer load.

Now, that was before the gas increase. But in the meantime there have been increases in the cigarette cost also. So I assume that $60,000 might be a fair figure.

Senator **Abdnor**. Buying that amount, you almost have to go to the manufacturers.

METHODS USED TO BOOTLEG CIGARETTES TO HIGH TAX STATES

Mr. **Ehrlich**. No. They go to cigarette wholesalers. They pick them up at night, say 2 a.m. or 3 a.m. in the morning. They start out with the cigarettes over the highways and then to avoid detection someplace along the line, so I have been told—I haven't seen it—they will break down those trailer loads into two or three other trailer loads and bring them into New Jersey, Pennsylvania, New York, Connecticut, and Massachusetts. That is why those States are not able to track them all the way through, because they don't have the agents to see what is going on at those particular points.

Now, I think Mr. Murphy can address that point much better than I can from his knowledge and experience.

Mr. **Murphy**. If I may give you an example of a manner in which they would go down, Senator. They would leave from one of the high-tax rate States, let us say up in the Northeast, and they would head down with an empty truckload. They would get to one of the distributors in North Carolina and load up their truck. Basically they have not committed a crime until they have crossed the State lines. We would have people, mainly in States up in the Northeast, have these areas under surveillance. The outcome would be that they would come in and possibly if the load was very large they would off-load, as Mr. Ehrlich just said a minute ago, or they may carry the load all the way through. Our people would naturally then be involved in tailing them up north. But we wouldn't be in a position to make any arrests until they had crossed the lines and let's say come into the State of New Jersey.

In the State of New Jersey, and we will use that as an example, they have certain outlets upon which they can unload their cigarettes and sell their cigarettes, which are basically stamped with a North Carolina 2-cent stamp rather than being stamped with a New Jersey 19-cent stamp.

We estimate that for every carton of cigarettes that is purchased and smuggled into the State of New Jersey, they make a minimum of $1 a carton.

GUILT OF SELLERS

Senator **Abdnor**. Let me ask you this: Those that are caught today with the tobacco, does that make the seller of it down in North Carolina just as guilty and subject to arrest?

Mr. **Murphy**. They have not committed a crime down there, Senator. See, they can sell cigarettes to anybody.

Senator **Abdnor**. I know. But you don't have to be very bright to know when you make that sale what is happening.

Mr. **Murphy**. Naturally they are interested in making money. They basically don't care who they sell it to.

Senator **Abdnor**. Has the BATF ever tried to follow back on this?

Mr. **Murphy**. The Bureau has tailed them all the way back. They have tailed them and can pick them up in any State that they so desire, provided they find out where the ultimate load is going to be deposited. But quite frequently when we have a lead on something or through an informant or through some other means we find this out and we do tail them, we want to tail them all the way back to see where the destination is to see where all of these illegal activities are taking place. So, therefore, you would take them back all the way into the State of its destination.

I think I would like to go maybe one step further in connection with this, Senator. We are having a lot of trouble also with hijacking. They are hijacking these trucks as they come up. A lot of times it is the other racketeers who are hijacking the trucks of the other racketeers. So this is the best way for me to put it.

CONTRABAND LAW

Now, I would like to comment just on one other area, and that is the fact that with the enactment of the contraband law, it was strongly recommended that ATF take over the enforcement of this law. I was formerly a Federal agent myself, not with Alcohol, Tobacco and Firearms. I knew the ability of this organization and we were extremely pleased in the States to have them operating and being assigned the responsibility to administer and enforce the law.

Now, with the contraband law being enacted, organized crime became more sophisticated. I might even say to the best of our recollection, and from the information that is brought to our attention, they even went underground. But they are in a position, because they have the manpower and the resources, to become sophisticated. No State or no group of States standing alone will ever be in a position financially to compete with this organized crime group.

REPRIMAND OF CIGARETTE SELLERS

Senator **Abdnor**. That might be true. Let's go back to that question. Has the ATF ever reprimanded the source of where the sale was made?

Mr. **Ehrlich**. Senator, I don't wish to be misleading, and I can only rely on my memory from some remarks which I heard at an NTTA meeting last fall, but if I recall correctly, I believe it was stated that there were 10 to 12 wholesalers in North Carolina who were involved in cigarette bootlegging and to their knowledge all but two, and I could be wrong there, were out of business because of what the ATF had done toward enforcement of the cigarette contraband law. So I would say from that standpoint A.T. & F. has been most effective in putting those wholesalers that had been involved out of business.

Now, they have violated no Federal law. They have violated no State law, because the State tax has been paid. There is no provision in the Federal law because of that for their prosecution. So the only other way you can do it is to curtail cigarette bootlegging, as A.T. & F. has been doing it, by putting the people at the destination out of business.

Senator **Abdnor**. You people wouldn't object if there was some kind of a Federal law, though, would you?

Mr. **Ehrlich**. If it could be done, I think it would be terrific.

Senator **Abdnor**. I am not a lawyer.

Mr. **Ehrlich**. I would say if it could be done, that would be fine.

Mr. **Rothenberg**. The way the law reads now, the crime occurs when cigarettes are taken across State lines. So if the supply does not cross State lines, he does not commit a violation of the rule.

Mr. **Ehrlich**. I am not sure how North Carolina or Kentucky or Virginia might be coming in and usurping their powers, particularly under the present plan of decentralization.

Mr. **Murphy**. Senator, the Alcohol and Tobacco tax people did some very indepth audits in the North Carolina area of these businesses that were selling cigarettes that were used for cigarette smuggling. As a result of this, I believe it has had an impact on a lot of these businesses going out of business.

Senator **Abdnor**. Have there ever been any arrests where the contraband doesn't have an 8 cents tax on it, the Federal tax? Can they get around that? As long as you are going to commit a crime, you might as well do it right.

Mr. **Murphy**. The 8 cents tax is collected from the manufacturer, so the Federal tax is already paid.

ENFORCEMENT COSTS

Senator **Abdnor**. One last thing. You said the BATF has been spending about $2.5 million a year for enforcement.

Mr. **Ehrlich**. I said that. I think that was in Mr. Tulley's statement. But it was my understanding that that was the amount requested in their appropriation request, $2 million or $2.5 million for this year. I believe they started off with about $3 million.

Now there again I don't wish to be misleading to you because I don't have the figures.

Senator **Abdnor**. We can find that out.

Mr. **Ehrlich**. But I think it is not much in excess of $3 million, as I recall. Am I correct on that?

Mr. **Rothenberg**. In terms of specific manpower, my understanding is that at the outset of contraband cigarette enforcement, ATF employed 50 agents for the antismuggling effort. Under the appropriation discussed in recent months, that would be reduced to no specific staff members at all assigned to this responsibility.

LETTERS AND PREPARED STATEMENTS

Senator **Abdnor**. Gentlemen, thank you very much. I guess I have to move along here. We have another group. Thank you for coming down today and giving us your testimony. Your prepared statement and letters will be inserted in the record at this point.

Mr. **Murphy**. Thank you, Mr. Chairman.

[The information follows:]

STATE OF FLORIDA

DEPARTMENT OF BUSINESS REGULATION
THE JOHNS BUILDING
725 SOUTH BRONOUGH STREET
TALLAHASSEE, FLORIDA 32301

Bob Graham, Governor
Gary R. Rutledge, Secretary

Charles A. Nuzum, Director
Division of Alcoholic
Beverages and Tobacco

February 17, 1982

Ms. Dorothy Pastis
Staff Assistant
Subcommittee on Treasury, Postal
Service, and General Government
Senate Appropriations Committee
132A Russell Senate Office Building
Washington, DC 20510

Dear Ms. Pastis:

In accordance with your request, I am enclosing a copy of my statement for the Subcommittee on Treasury, Postal Service and General Government relative to our concern under the proposed disbanding of the Bureau of Alcohol, Tobacco and Firearms. My colleagues in the National Conference of State Liquor Administrators and I have agreed to endeavor to speak on different matters of concern to attempt to avoid duplication.

I look forward to seeing you next week.

Sincerely yours,

Charles A Nuzum

Charles A. Nuzum
Director

Prepared Statement of Charles A. Nuzum

MR. CHAIRMAN:

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE.

THE IMPACT TO THE STATE OF FLORIDA OF DISBANDING OF BATF WOULD BE AS FOLLOWS:

THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS HAS BEEN A PARTNER WITH THE STATE OF FLORIDA, DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO IN THE ENFORCEMENT EFFORTS AND REGULATION OF THE LAWS GOVERNING THESE INDUSTRIES FOR THE BEST INTEREST AND THE WELFARE OF THE CITIZENS OF THIS STATE.

WE FEEL THAT A MOVE TO ABOLISH BATF MERITS SERIOUS CONSIDERATION TO THINK OF THE IMPACT OF DISBANDING A BUREAU THAT HAS HAD PSYCHOLOGICAL IMPACT AND MEASURABLE EFFECTIVENESS IN TURNING AROUND MANY OF THE CIGARETTE BOOTLEGGING PROGLEMS OF THIS COUNTRY.

WE FEEL THAT ABOLISHING SUCH AN AGENCY WOULD SEND A CLEAR SIGNAL OF AN OPEN DOOR INVITATION FOR A RETURN OF OUR TAX PROBLEMS OF THE RECENT PAST.

IN THE AREA OF CIGARETTE BOOTLEGGING, FLORIDA HAS A PARTICULARLY UNIQUE SITUATION. OUR VERY SERIOUS PROBLEM OF DRUG TRAFFICKING, WHICH HAS THE BEST SMUGGLING MACHINERY MONEY CAN BUY, ALSO LENDS ITSELF EASILY TO CIGARETTE TRAFFICKING.

IN FLORIDA FINANCIAL LOSS IS BETWEEN 40 AND 50 MILLION DOLLARS A YEAR. INVESTIGATIONS ARE COMPLEX AND TIME CONSUMING. THE STATE OF FLORIDA NEEDS BATF'S HELP AND SUPPORT WHEN CONDUCTING AN INVESTIGATION AND TRACING THE PAPERWORK OF ILLEGAL SHIPMENT. QUITE OFTEN THESE INVESTIGATIVE TRAILS LEAD TO ORGANIZED CRIME.

THE DISBANDING OF BATF WILL ADVERSELY AFFECT FLORIDA IN THE FOLLOWING WAYS:

1. THERE WOULD BE NO CONTROL OF INTERSTATE ILLICIT ALCOHOLIC BEVERAGE AND BOOTLEGGING OF CIGARETTES BETWEEN STATES. BATF HAS BEEN THE COMMUNICATIONS LINK BETWEEN THE STATES AND THIS WOULD NO LONGER BE AVAILABLE IF FUNDING IS DISCONTINUED.

2. THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO RECEIVED A LEAA GRANT SPONSORED BY BATF IN 1980, WHICH WILL TERMINATE THIS YEAR. FLORIDA WAS SELECTED OVER SOME TWENTY (20) STATES TO RECEIVE THIS $100,000 GRANT TO COMBINE ITS ENFORCEMENT EFFORTS WITH THE FEDERAL AUTHORITIES IN CONTROLLING THE CIGARETTE SMUGGLING PROB LEM IN THIS STATE, WHICH BATF ESTIMATED TO BE APPROXIMATELY A 43 MILLION DOLLAR ANNUAL EXCISE TAX LOSS. IN 1981, IN A JOINT EFFORT WITH BATF, THE LARGEST CIGARETTE SEIZURE IN THE UNITED STATES WAS MADE IN MIAMI WHERE OVER 277,730 CARTONS OF CIGARETTES WERE SEIZED, WHICH WOULD HAVE REPRESENTED $583,233 IN FLORIDA EXCISE TAX LOSS.

3. BATF HAS BEEN VERY ACTIVE IN PROVIDING OUR AGENTS IN THE STATE WITH VALUABLE TRAINING IN THE AREA OF ALCOHOL AND TOBACCO. THIS WAS DONE WITH NO EXPENSE TO FLORIDA. THIS RESOURCE WILL NO LONGER BE AVAILABLE IF FUNDING IS DISCONTINUED.

4. THROUGH THE COMMUNICATION LINK ESTABLISHED BETWEEN BATF, THE DIVISION AND OTHER STATES, A VITAL INTELLIGENCE RESOURCE OF INFORMATION AND COVERAGE OF OUT-OF-STATE INVESTIGATIVE WORK WILL BE MISSING.

5. WITH THE PASSAGE OF THE INTERSTATE CIGARETTE CONTRABAND ACT BY CONGRESS IN LATE 1978, BATF BEGAN AN ACTIVE INVESTIGATIVE ROLE IN THE EASTERN PART OF THE COUNTRY, INCLUDING FLORIDA, IN AN EFFORT TO CONTROL INTERSTATE CIGARETTE BOOTLEGGING. CASES WERE MADE IN SEVERAL STATES, INCLUDING FLORIDA. THE FLORIDA CIGARETTE EXCISE TAX COLLECTIONS HAVE INCREASED ANNUALLY SINCE THEN AS FOLLOWS:

FISCAL YEAR	CIGARETTE REVENUE	INCREASE
1977-78	230,619,735.88	
1978-79	237,913,552.48	7,293,816.60
1979-80	254,048,456.60	16,134,904.12
1980-81	263,745,068.46	9,696,611.86

CERTAINLY THE EFFECTIVENESS OF BATF'S INVESTIGATIVE EFFORTS, COUPLED WITH OUR STRONG CIGARETTE TAX ENFORCEMENT PROGRAM, IS A VERY SIGNIFICANT AND POSITIVE FACTOR IN PROTECTING THIS IMPORTANT REVENUE SOURCE.

WE HAVE NO DOUBT THAT BOOTLEGGING WILL CONTINUE AS LONG AS THERE IS A DOLLAR TO BE MADE. FLORIDA AND THE OTHER EASTERN STATES, CAN USE ALL THE HELP THEY CAN GET IN AN EFFORT TO STOP IT. THE CIGARETTE CONTRABAND ACT WAS PASSED BY CONGRESS IN 1978 AFTER LITERALLY YEARS OF EFFORT BY THE STATES AND BECAUSE OF THE MILLIONS OF DOLLARS IN CIGARETTE TAXES LOST BY THE STATES. INDIVIDUALLY STATES POSITIVELY CANNOT COPE WITH THIS PROBLEM DUE TO THE INTERSTATE NATURE OF CIGARETTE BOOTLEGGING.

Statement to Subcommittee
on Treasury, Postal Service, and
General Government

February 22, 1982

Re: Treasury Appropriations - Tobacco Considerations

As I did previously in a November 3, 1981 letter to Treasury Secretary Regan, I would like to express my concern over plans to curtail the Tobacco Enforcement Program of the Bureau of Alcohol, Tobacco, and Firearms (ATF) and enforcement of the Federal Contraband Cigarette Act (P.L. 95-575).

While statistical research on Massachusetts tax losses due to cigarette bootlegging vary from the 1975 ACIR (Advisory Commission on Intergovernmental Relations Study) projection of $12.5 million annually, to a 1980 Massachusetts Legislative Research Bureau Study that projects annual losses at $17. million, our cigarette excise tax revenue has increased in both fiscal years 1980 and 1981, $2.7 million and $4.1 million, respectively. We attribute these increases, in part, to ATF and Massachusetts combined enforcement efforts.

Having awareness that the National Tobacco Tax Association (NTTA) plans to submit a statement, reflecting Association resolutions expressing support of ATF activity against cigarette smuggling, I only wish to emphasize local concern over this national problem.

I wish to strongly suggest appropriation for contraband cigarette enforcement in the ATF and enforcement of P.L. 95-575.

I remain concerned that withdrawal of ATF from its Tobacco Enforcement Program will result in a revival of the cigarette bootlegging problem.

Thank you for your consideration of my statement.

L Joyce Hampers

L. Joyce Hampers
Commissioner
THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
BOSTON, MASS.

LOUIS L. GOLDSTEIN
COMPTROLLER OF THE TREASURY
STATE TREASURY BUILDING
P. O. BOX 466
ANNAPOLIS, MARYLAND 21404
269-3801

February 17, 1982

Honorable James Abdnor, Chairman
Subcommittee on Treasury, Postal
Service and General Government
132A Russell Senate Office Building
Washington, DC 20510

Dear Senator Abdnor:

As Comptroller of the Treasury for the State of Maryland, I am charged with enforcing state alcohol and tobacco tax laws in Maryland.

In fulfilling that responsibility, our office has worked closely with the Bureau of Alcohol Tobacco & Firearms. We have made significant progress in reducing illegal cigarette smuggling and illegal moonshine operations as a result of our cooperation with the BATF.

I called the first meeting of East Coast states to consider ways of combatting cigarette smuggling in 1965. The greatest good has been accomplished, however, since the states began cooperative enforcement efforts with agents of the Bureau of Alcohol, Tobacco & Firearms under the provisions of the Contraband Cigarette Act, which went into effect in 1979.

Maryland's geographic location and network of interstate highways place it squarely in the path of the over the road cigarette smuggler.

The current move to dissolve the Bureau of Alcohol, Tobacco & Firearms without allowing for continued enforcement of the Contraband Cigarette Act can only mean one thing - a resurgence of illegal "buttlegging". As soon as it becomes known that federal agents are no longer available for enforcement of the law, the law itself becomes a toothless tiger.

Organized crime will swiftly step into the breech and renew its tremendously profitable cigarette smuggling operations. At what cost? Before passage of the Contraband Cigarette Act in 1979, the Advisory Commission on Intergovernmental Relations estimated the states were losing $400 million annually because of cigarette smuggling alone.

To remove a major enforcement tool now would only compound the problem, imposing additional revenue losses at a time when budgets are tight at all levels of government.

We are not asking for a federal handout. We are willing to do our part in the enforcement effort, both in the case of the Contraband Cigarette Act and in combatting illegal moonshine stills. We are asking for a continued federal presence in these enforcement activities.

I might add that we forsee a return of illicit bootleg alcohol stills as well as cigarette smuggling, if the BATF is disbanded and enforcement is not continued. Federally authorized alcohol fuel plants, if not properly policed, can easily be utilized to produce alcohol for human consumption.

In Maryland, we have moderate taxes on both alcoholic beverages and cigarettes. Revenue from distilled spirits, beer and cigarette taxes is shared with Maryland's 23 counties and Baltimore City, meaning that any losses of those revenues are shared as well.

I urge the Committee to ensure that enforcement powers, manpower and appropriations be maintained to assist in these important areas of concern.

With best wishes and kindest regards, I am

Cordially yours,

Louis L Goldstein

Louis L. Goldstein

LAW ENFORCEMENT PANEL

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

STATEMENT OF NORMAN DARWICK, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

LAW ENFORCEMENT COMMUNITY SUPPORT OF BATF

Senator **ABDNOR**. Our next group that we will hear from is with the law enforcement area. We have with us Norman Darwick of Maryland.

Mr. Darwick, would you care to summarize your statement? You can cover the areas you want to cover, but we will put your entire statement in the record.

Mr. **DARWICK**. Fine.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to offer comments of the law enforcement community to your deliberations on the future of the Bureau of Alcohol, Tobacco and Firearms.

I am Norman Darwick, executive director of the International Association of Chiefs of Police, and I am authorized to speak for its more than 13,000 police executive members throughout the United States and 60 other countries.

During the earlier budget hearings for BATF, we appeared before Congress to argue for the retention of this vital Federal agency. And the voting members of our association endorsed and supported that position with a formal resolution during our most recent annual conference.

However, much of the investigative work of BATF has come to a standstill under the threat of further budget reductions, absorption by other agencies, and rumors of RIF's.

From recent public statements by Treasury officials, BATF's demise now appears to be imminent and the law enforcement community will certainly suffer its loss if that happens. Our only hope for absorbing this negative impact is to now argue for the retention of its vital missions if they are not to be housed within a central bureau.

The work of BATF has been extremely effective not only on the national front but at the international level. Under its current leadership, BATF has supported State and local law enforcement agencies in a superior fashion.

I don't want to get into the various pieces of legislation that impact BATF, but I want to point out there are problem areas, and because it is not popularly known that BATF is the lead agency of enforcement for many offenses, you can quickly recognize the need for regulatory action at the Federal level with regard to the proper and effective response to this type of criminal activity.

HANDGUN TRACING

I believe that nothing speaks more eloquently for the vital role of BATF than does the tragic incident of March 30, last year. BATF traced the handgun used by Joseph Hinckley, Jr., against President Reagan within 30 minutes of receiving the report. BATF was also instrumental in tracing the firearms used in the attempt on Pope John Paul II in Rome.

Law enforcement cannot afford to lose these services. If they are targeted for transfer, we must argue for the smoothest transition possible toward the minimum limitation of services.

INCORPORATING BATF WITHIN TREASURY

It would appear that since BATF is a function of the Treasury Department, the quickest transfer of services lies within other functions of Treasury, such as the Customs Service for regulatory responsibilities and the Secret Service for its enforcement arm.

There does not appear to be any compelling reason to invoke new legislation or bureaucratic empire building that may be occasioned by transferring these services to an element of government outside the Treasury Department.

We are talking here of services the law enforcement community desperately requires. Any transfer that would slow down the delivery of those services for any amount of time would undermine ongoing relations and open cases involving State and local jurisdictions.

We live in constant fear that the tragedies I spoke of earlier can happen at any moment.

Your deliberations and your decisions will have a long-term impact on the law enforcement community and the general public. The International Association of Chiefs of Police supports the most timely, most effective, and smoothest possible transfer of these services.

I hope that this very brief statement assists you in your decisions.

Senator Abdnor. I am certainly happy to have it, Mr. Darwick. You are certainly in a position to know what they contribute to law enforcement, the ATF.

MAJOR CONTRIBUTIONS OF ATF TO LAW ENFORCEMENT

What would you say the greatest contribution is that they make to you in local law enforcement? What are the greatest contributions?

Mr. Darwick. I think in the last several years the investigative process as it relates to the arson initiative has been more helpful to law enforcement because of the increase in that particular problem. As you know, they are very effective in tracing weapons for us. Right now we understand that there are hundreds of automatic weapons cases and explosives cases that are going uninvestigated because of the lack of resources at the State and local level. We are so dependent on the resources of BATF in those areas.

ASSOCIATION RESOLUTION SUPPORTING BATF

Senator Abdnor. Back on September 27, in New Orleans, your association formally adopted a very strong resolution supporting the BATF, did you not?

Mr. Darwick. Yes, sir, we did.

Senator **Abdnor**. Did you ever change or waiver on that at all a little later on?

Mr. **Darwick**. No. Our position is substantially the same. We support BATF in its current configuration. It is apparent to us, however, that it is not going to be retained in that current configuration. In recent meetings with the Department of the Treasury we have taken a position that if it cannot continue in that configuration, we support the movement of the regulatory arm to Customs and the enforcement arm to the Secret Service.

Senator **Abdnor**. You never did change on that, then, and come out suggesting that maybe you could support abolishing BATF. I just want to get that for the record.

Mr. **Darwick**. Our first priority is to retain it as it is currently organized. If that is not possible, we don't want to see it go into the Department of Justice. We don't see any compelling reason for that. It is in Treasury now. The Secret Service frequently utilizes BATF agents for protection of VIP's in the field, and that seems to be the most reasonable for us.

What we want to see is action now. We want leadership for BATF. We want an appropriate budget for BATF, and we want them to have the resources necessary to do the work.

Senator **Abdnor**. We thank you for that statement. Thank you for coming to Washington today.

Our next witness is Joseph Price of the Federal Criminal Investigator's Association of Ohio.

Mr. Price, we welcome you to the committee today. I am waiting to hear your testimony.

Federal Criminal Investigator's Association

STATEMENT OF JOSEPH PRICE, FEDERAL CRIMINAL INVESTIGATOR'S ASSOCIATION

Mr. **Price**. Mr. Chairman and members of the subcommittee, I represent an organization known as the Federal Criminal Investigator's Association, which is comprised of Federal special agents and criminal investigators from every Federal agency that utilizes criminal investigators. This includes the Customs Service, Internal Revenue Service, Secret Service, Postal Service, the Bureau of Alcohol, Tobacco and Firearms, as well as other Federal agencies such as the FBI and the Drug Enforcement Administration.

Senator **Abdnor**. That is all part of your group?

Mr. **Price**. Yes, sir. That is correct.

The Federal Criminal Investigator's Association is not a union. We do not negotiate, nor do we lobby for pay increases or represent our members in grievance procedures. We do work with Congress and the administration in the advancement of professionalism of the Federal criminal investigator and the laws and regulations that he is sworn to enforce.

It is the proposal to reorganize the Bureau of Alcohol, Tobacco and Firearms that I wish to discuss with this subcommittee today. Having the capability to analyze and evaluate the various Federal law enforcement agencies' management structure, policies, program effectiveness, and personnel, the Federal Criminal

Investigator's Association feels competent to comment and make recommendations to the Congress and appropriate Treasury officials on the proposal of reorganization.

The administration and enforcement of the Gun Control Act of 1968 has been controversial, to say the least. It is the sincere opinion of the Federal Criminal Investigator's Association that the proposal to reorganize the Bureau of Alcohol, Tobacco and Firearms is worthy of your support and our support.

SUPPORT FOR REORGANIZATION OF BATF

A poll of a large number of our members who are Bureau of Alcohol, Tobacco and Firearms agents has revealed unanimous support for the reorganization of the Bureau of Alcohol, Tobacco and Firearms if there will be no loss of criminal investigators' positions. They feel that the caliber of management in the Secret Service and the Customs Service is superior to the management which they have experienced in the Bureau of Alcohol, Tobacco and Firearms and that a reorganization will enhance the enforcement efforts in the area of gun control and will also permit them to expand their expertise in additional areas of law enforcement. The Federal Criminal Investigator's Association agrees.

CONSIDERATIONS OF BATF REORGANIZATION

However, there are several considerations of the reorganization that I wish to bring to your attention. These are:

One, with the transfer of agents to Secret Service and Customs Service, will there be sufficient budget for their effective utilization? I am speaking in terms of training, relocation, equipment, office space, support staff, and administrative services.

Two, will the transferees have equality in grade and assignment with their counterparts in their new agency? This is an important consideration to the BATF agents.

Three, will the "schedule A" agents presently with BATF be included in the reorganization and converted to GS-1811 positions as soon as possible? Most, if not all, of the schedule A appointees should have been converted months ago, but a lack of remedial administrative process has prevented this conversion.

I thank each of you for taking time from busy schedules to receive my association's position on this matter, and I offer the assistance of the Federal Criminal Investigator's Association to this subcommittee and its individual members at any time.

Senator ABDNOR. Thank you, Mr. Price. We thank you for coming forward today and speaking in a voice for your group.

Let me ask you, were you ever consulted by, for instance, the Treasury Department as to this move? Did they ever come to you or your organization and ask for your thoughts, your opinions, your input?

Mr. PRICE. No, as a matter of fact, they didn't. But we did go to them and ask them if they would accept our input, Senator, which they did do.

Senator ABDNOR. Did you do it in the form of a written statement?

Mr. PRICE. Well, actually——

Senator **Abdnor**. Then we could have it and make sure of some of the things you are saying here.

Mr. **Price**. As I indicated, we have worked with the present administration from its very beginning and we have also worked with Mr. Walker and his staff as well as with the Department of Justice officials. What we are trying to do, sir, is to get the street agents' voice heard within the higher echelons of the Government. This is just one method we have used, such as coming before your subcommittee here today.

NEED FOR ADDITIONAL AGENTS

Senator **Abdnor**. We are certainly happy to have your input. Do you feel the move came about—there seems to be a need for extra agents. We will get into that probably more tomorrow. But if there is a need for special agents, additional agents, and what they are doing, do you think we are going to ever keep complete enforcement on the liquor, the cigarettes, the arson? Are you satisfied in your mind that they will give it the proper attention, that it won't be given a little less priority?

Mr. **Price**. No. I think I can address that issue with a great deal of confidence, sir. The Secret Service has traditionally been known to have the highest caliber of management within the Federal law enforcement.

TERRORISM PROBLEM

Senator **Abdnor**. All I know is we have been hearing we have a terrorism spread going on right now and the need for more people. The need for more people has to come under the cutting by the Secret Service. I am wondering, if something is going to have to give, I can't imagine they are going to come and say we have to have these extra agents, additional agents. If something had to have a little less attention paid to it, don't you think it would likely come in these areas that are also quite concerned about that heretofore never really seemed to be a part of the Secret Service?

Mr. **Price**. Certainly. And during our campaign years, the Secret Service has had to draw from other Treasury agencies. They have drawn from Customs. They have drawn from the Bureau of Alcohol, Tobacco and Firearms. I think BATF furnished over 600 agents at various times in the last campaign, the last Presidential campaign. Certainly when those agents leave their duty stations for 30 days at a time, the cases they have in their drawer are left unattended.

But I think what we are trying to say here is that the Secret Service has traditionally, when it comes to Federal law enforcement, been concerned with counterfeiting and with theft of Government checks. The theft of Government checks is dropping off by virtue of the fact that we have bank transfers becoming more and more popular rather than having checks mailed through the mail. Also, in counterfeiting, it is becoming more and more expensive for the counterfeiter to counterfeit money and make a profit on it. So I think by assigning additional——

Senator **Abdnor**. I mean why is that, for instance?

Mr. **Price**. The cost of the equipment necessary to put out a good set of plates and the printing and so forth.

Senator **Abdnor**. That is the first good comment I have heard for inflation. [Laughter.]

Mr. **Price**. But it would seem to us that by putting additional agents into the Secret Service, and particularly with the expertise that the Bureau of Alcohol, Tobacco and Firearms has in street work, that it would be a very good blend, sir.

QUALITY OF ATF AGENTS

Senator **Abdnor**. The agents in the ATF, and taking nothing away from them, are they equally as qualified, trained in the field, as Secret Service agents? I mean, could every guy who is—in your mind, and I am putting you on the spot. You represent them all. But honestly, could every agent in the ATF have made the Secret Service?

Mr. **Price**. Oh, I think so, yes. There is one thing that we have to remember here, however, and that is the qualifications for entrance with the Bureau of Alcohol, Tobacco and Firearms have not been as high as the Secret Service.

Senator **Abdnor**. That is really what I meant.

Mr. **Price**. The Secret Service traditionally has called for a college education, or its equivalent, and the Bureau of Alcohol, Tobacco and Firearms has not been that stringent.

Senator **Abdnor**. So what if they have some that aren't? Isn't it conceivable you could have agents that are not as well not only qualified but don't have the ability that you are demanding of the Secret Service?

Mr. **Price**. I really don't think so, sir, because I think these people, most of them have been on the job now for about an average of 4 to 5 years with the Bureau of Alcohol, Tobacco and Firearms. Certainly that is a long enough period of time for them to have demonstrated their ability to function as a Federal agent.

Senator **Abdnor**. Is the salary commensorate with the Secret Service?

Mr. **Price**. I don't believe it is. I believe the journeyman level may be one grade less than with the Secret Service.

Senator **Abdnor**. Thank you very, very much.

Mr. **Price**. Thank you.

Police Executive Research Forum

STATEMENT OF JOHN DUFFY, SHERIFF OF SAN DIEGO, CALIF., POLICE EXECUTIVE RESEARCH FORUM

Senator **Abdnor**. Mr. John Duffy of San Diego, Calif.

Mr. Duffy, we certainly welcome you to the committee. We are anxious to hear from you.

Mr. **Duffy**. Thank you, Mr. Chairman.

I am John Duffy, Sheriff of San Diego County, Calif. I am here in my capacity as the president of the Police Executive Research Forum to offer testimony to you and to the committee. I appreciate the opportunity to testify.

I would like to first of all perhaps somewhat qualify myself to talk about my own part of the country and our relationship there.

The county sheriffs down in San Diego County provide daily law enforcement services to over half a million people, which is better than a quarter of the total population in the county. We are unique in that we share an 80-mile border with the Republic of Mexico. I think that presents problems germane to your discussion here. We also have a 70-mile coastline.

Senator **ABDNOR**. I may be looking at the border you are talking about this weekend because we have Customs under this committee, too, and they have been trying to get me down there.

Mr. **DUFFY**. That particular part of the country poses some smuggling problems involved in firearms. In other words, to summarize it, guns go south and narcotics come north. It is quite often a trade.

My department is large enough to have an organized arson/explosives task force which works directly with ATF. We also have criminal intelligence units that work with ATF. We have plenty to do.

FUNCTIONS OF POLICE EXECUTIVE RESEARCH FORUM

I would like first of all to tell you what the Police Executive Research Forum is. We are a membership organization of 70 of the chief executives of large law enforcement agencies in the country. Our concerns are directed to the concerns of large police jurisdictions. We are not a large organization.

The forum created a firearms law enforcement task force last year and has received findings of that task force. I might first of all say the task force is made up of the chief executives of Chicago, Atlanta, Miami, Fremont, Calif., which is in the bay area, near San Francisco, and Fairfax, Va., the county police department, which I am sure you are familiar with.

FIREARMS LAW ENFORCEMENT PRACTICES

The task force has as its goal the improvement of firearms law enforcement practices and particularly developing some new strategies for the illegal commerce in firearms; and, number two, the criminal use of firearms.

In surveying our membership, we have discovered that the local law enforcement agencies have established priorities in that they focus on reducing the use of firearms in felonies rather than many of the other type crimes and also focus on the illegal possession of firearms. That is pretty much across the board.

Also discovered by the task force, and not surprising, is that firearms abuse is not entirely a local problem but is, rather, interjurisdictional—State, Federal, and local. We discovered also there is a need for a consistent Federal plan and cooperative efforts between the Federal, State, and local in order to combat the abuse of firearms and the criminal use of firearms, the illegal trafficking of firearms.

We believe that there is a major Federal role that is very, very important and that could be summarized briefly as the regulation of the illegal commerce in firearms, the tracing of firearms used to commit crimes, as a benefit to local law enforcement, as described earlier by Norm Darwick, with the scientific expertise that the staff of the ATF already has acquired and is available to local law enforcement in Federal prosecution, particularly in the area of bulk firearms and interstate and criminal conspiracies.

It is the position of the Police Executive Research Forum that the major issue is not where the firearms function is located within the Federal bureaucracy but that it is given prominent status and sufficient funding and assurances that the mission of ATF can be earnestly and effectively carried out. And as my predecessor here at the podium said, while the debate goes on, the job is not being well done.

Senator ABDNOR. It isn't now?

SAG IN ENFORCEMENT EFFORTS

Mr. DUFFY. No, sir. I think there is a hesitancy or a pullback position, and some of the resources probably have been diverted. Their attention has been diverted to whether or not they intend to survive or where they will be located. There is a natural sag in enforcement efforts.

Senator ABDNOR. Is that just in the last year or has that been for long?

Mr. DUFFY. I think since the announcement of this possible change. It is our belief that the factors to be used in your deliberations should include the following: That the combined regulatory—and by that I do not mean alcohol and tobacco taxes but, rather, the firearms and explosives and the arson functions—that the regulatory, licensing and enforcement functions must remain intact, together, because they complement each other. They are necessary to each other. The constraints of inadequate resources and some past hesitant support from the administration and even some lobbying efforts to restrict the enforcement powers need to be lifted from AFT. I believe that any shortcomings our task force discovered in the relationship with local law enforcement by ATF were in large part due to that, due to those constraints.

We also believe that there must be an adequate level of funding and sufficient number of people to carry out the mission. We believe that the firearms function must be recognized as an integral part of the agency's mandate, whatever agency, wherever ATF might wind up. We also believe firmly with the expertise of ATF, that the interest of continuity must be maintained. There is an awful lot of expertise already gained. There should not be any break in the continuation of that.

The excellent working relationship with State and local law enforcement must be maintained. I think that was the intent of the preamble at least of the 1968 Gun Control Act was that support of the Federal, local, and State efforts toward the things I mentioned.

INVESTIGATION OF ARSON AND ILLEGAL EXPLOSIVES

The investigation of arson and illegal explosives is another important function that deserves mention. I think you already alluded to it, Senator. The terrorism threat is a new element that was not present in 1968 when we were looking only at firearms. The fragmentation that already exists at the Federal law enforcement level is unknown in other countries in terms of dealing with the terrorism threat. We already have a number of Federal agencies that have different responsibilities, ranging from the Secret Service, FBI, ATF, even the State Department, and others who have a responsibility in one way or another with regard to the domestic and the international terrorism threat.

We believe that ATF's expertise in this area in responding to at least explosives, bombs, and that sort of thing, is unequaled. I would mention obviously the national response team as one of the most significant.

CHANGES IN BUDGET CYCLES

Earmarking funds for a single function in our view is a mistake. That is allocating funds to maintain a certain level of service. It is our belief that the Administrator, wherever it may be, needs the flexibility to change and address new priorities. Terrorism, for example, was not a threat in 1968. We were not talking about it. Those things change. As a man who has spent a career in law enforcement, coming up the ranks, and who has almost 29 years of service now, and heads a law enforcement agency, I can tell you that we have to change priorities sometimes even in midyear, between budget cycles. The Administrators need that flexibility. The Administrators would obviously still remain accountable in the results, whatever responsibilities finally wind up with wherever this agency winds up.

TERRORISM THREAT

In conclusion, with the 1968 Gun Control Act, Congress saw the need for a Federal role in firearms law enforcement. I already described that. I would submit to you, Senator, and members of the committee, that the need is even greater today. The terrorism threat is a new element, as I mentioned. Violence in our society is increasing day by day. Our concern is not the exact location within the Federal bureaucracy where the ATF function is located but that it should be preserved and its prominence intact and give us sufficient funding and staff to operate.

Thank you very much for allowing me to appear here. I will be pleased to answer any questions. I filed written testimony with you.

PREPARED STATEMENT

Senator Abdnor. Thank you. Your entire written statement will certainly be placed in the record. We thank you for your valuable input through your years of experience and the important position you hold.

[The statement follows:]

POLICE EXECUTIVE
RESEARCH FORUM

PREPARED STATEMENT OF JOHN F. DUFFY

SHERIFF, SAN DIEGO COUNTY, CALIFORNIA
PRESIDENT, POLICE EXECUTIVE RESEARCH FORUM

Mr. Chairman and distinguished members of the Subcommittee, I thank you for this opportunity to speak about the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms and about the role the Bureau plays in controlling arson and the use and abuse of firearms and explosives. I am here on behalf of the Police Executive Research Forum. We are an organization of law enforcement executives from the larger jurisdictions in the country. Our goal at the Forum is to improve the delivery of police services by promoting and bringing about the further professionalization of police executives and officers. The work we do is broad in scope: we conduct research and experiments, and we provide a needed forum for debate on criminal justice issues across a broad spectrum. We believe that, from these efforts, substantial improvements in the quality of law enforcement services will result.

The Police Executive Research Forum has created a Firearms Law Enforcement Task Force to address what we perceive to be problems caused by significant variations in the firearms law enforcement activities in cities and counties across the nation. The goal of the Task Force is to improve the firearms law enforcement practices of state and local law enforcement agencies by designing new strategies for interrupting illegal commerce in firearms and for curtailing criminal use of firearms. The Task Force's main objective in formulating these strategies is twofold: first, to improve law enforcement at the state and local level; and, second, to increase the measure of effectiveness that local and state law enforcement personnel bring to their work with their federal law enforcement counterparts.

Preliminary Task Force findings from a survey of our 70 department members, which members represent most of the nation's major urban centers, show that local police departments have been realistic in establishing their priorities for firearms law enforcement. Local law enforcement officials have usually assigned priority to areas in which they believe their departments' efforts will have the greatest effect--these are in reducing the use of firearms in the commission of felonies and in confiscating firearms that are illegally possessed and carried. No local firearms problem, however, is only a local problem. Jurisdictional constraints and interstate trafficking in firearms serve to undermine diligent, local efforts to combat firearm abuse. What is needed is a unified and consistent federal plan to support local law enforcement officials. The Gun Control Act of 1968 sought to effect that provision of support to state and local law enforcement by instituting the regulatory and criminal enforcement functions of the Bureau of Alcohol, Tobacco and Firearms.

In recognition of the necessity of this federal role in firearms law enforcement, the Forum's Firearms Task Force has stressed the importance of local and federal cooperation. In addition, the Task Force has reiterated the benefits that flow from federal participation--in regulating firearms commerce, in tracing firearms used in crimes, in providing scientific expertise, and in prosecuting under federal laws those violent offenders involved in illegal bulk sales, interstate crime, and major conspiracies involving firearms.

The abuse of firearms is a major cause of the violence that daily besets our citizens. We all know that firearm abuse does not stop at a county or state line. Firearm abuse knows no boundaries; firearm abuse is interjurisdictional and interstate, and these characteristics critically affect the ability of local and state law enforcement agencies to control such abuse. Patchwork state and local statutory efforts to deal with the problem exacerbate it.

Currently, the Bureau of Alcohol, Tobacco and Firearms is the only federal agency that is empowered to cross state lines and local boundries and whose primary function is to combat illegal commerce in firearms. Without federal support, state and local efforts to curb firearm abuse will be severely hampered.

We do not mean to suggest that the Bureau of Alcohol, Tobacco and Firearms is the only agency that would be capable of carrying out the federal firearms functions. It has been argued, for instance, that this function should be carried out by the United States Secret Service. Given sufficient time and resources, it is likely that the Secret Service would acquire the requisite expertise to enforce federal firearms laws. We in local law enforcement do not see the major issue as being where within the federal government the vital firearms control function shall be reposed. Our major concerns are that the federal role be given the prominent status it deserves, and that funding be provided in amounts sufficient to ensure that the federal firearms functions can be carried out effectively. Given assurances that the firearm function will be earnestly and effectively carried out, we support--with this guarantee--whatever decision is made as to the organizational placement of the function.

The present structure of the federal bureaucracy is not a subject that we profess to have mastered. The Congress and the Administration can best make decisions regarding the appropriate placement of specific agencies within the bureaucracy and about the functions with which each is to be charged. Still, we feel compelled, based on our experience and expertise in law enforcement, to bring to your attention a number of factors that we believe you must take into account during the course of your deliberations.

Looking at the increase in the number of violent crimes and, particularly, at the increase in the number of violent crimes in which firearms are used, it becomes clear that the federal government must play a larger role in combatting firearms abuse. Regulatory functions, like crime prevention and deterrence, and enforcement functions, like criminal investigations, are not functions that are mutually exclusive or independent of one another; they embrace, instead, mutually dependent activities that must occur, if you will, simultaneously. Therefore, if decisions are made to dismantle the firearm functions of the Bureau of Alcohol, Tobacco and Firearms and to transfer this function to another agency, it is important that the regulatory function and the enforcement function be transferred together and that each remain intact. Any fragmenting of the various aspects of crime prevention and investigatory activities will result in disjointed efforts.

Another consideration relates to the appropriate amount of funding to ensure an effective firearms functions. Some critics of the Bureau of Alcohol, Tobacco and Firearms make reference to inadequate regulatory and criminal firearms law enforcement. The Bureau's solutions to such inadequacies, however, have resulted in budget cuts and restrictions on the Bureau's regulatory and criminal enforcement powers. We in local law enforcement have, at times, been unhappy with the level of the Bureau's enforcement efforts, too. Nevertheless, we recognize that, from its inception, the Bureau has had to operate with inadequate resources and hesitant support from past administrations, all in the face of powerful lobbying efforts to cut its budget and restrict its enforcement powers. Efforts on the part of the Bureau to carry out its functions effectively have been thwarted repeatedly by such constraints. The constraints mentioned above must be released if we are to make any progress at all in our efforts to curb the use of firearms in violent crime.

An essential element in releasing these constraints is the provision of adequate resources with respect both to the level of funding and to the number of agents. The Bureau of Alcohol, Tobacco and Firearms has never had sufficient amounts of either in the past. We in local law enforcement strongly believe that greater funding levels and more agents are needed to effectively enforce firearms laws.

A third consideration regards the prominence of the firearms functions. It is vital that this function be recognized as an integral part of the agency's mandate. What is necessary is that its status be firmly established so that the firearms functions cannot be diluted. Providing sufficient funding and strong leadership for carrying out the firearms functions will achieve this goal.

Fourth, it is important that those who carry out the firearms functions be capable of maintaining the high level of expertise currently exhibited by the Bureau of Alcohol, Tobacco and Firearms personnel. The skill that members of the BATF have acquired through their experience in regulating and enforcing firearms laws is extensive. To maintain this current level, a sufficient number of BATF agents must be transferred to the agency given the firearms functions. This will provide for an adequate level of experienced personnel and, if needed, facilitate a transfer of knowledge and expertise to other employees.

A final concern must be with the relationship between those who carry out the federal firearms functions and officials of state and local law enforcement agencies. From the beginning the Bureau of

Alcohol, Tobacco and Firearms has maintained an excellent working relationship with local and state law enforcement agencies. This relationship is critical to an effective, comprehensive firearms program.

Other functions performed by the Bureau of Alcohol, Tobacco and Firearms which have benefited and continue to benefit state and local law enforcement include investigations into arson and the illegal use of explosives. Such benefits must be kept in mind during deliberations regarding the dismantling of the Bureau of Alcohol, Tobacco and Firearms.

Arson and criminal bombings represent some of the most malicious kinds of criminal acts by which our society today suffers. Targets range from residences to commercial properties and from vehicles to schools, usually without regard for loss of human life. Motives for these crimes include revenge, monetary gain, protest, intimidation and vandalism. The cost to the American public is in the hundreds of millions of dollars.

To combat this problem, personnel of the Bureau of Alcohol, Tobacco and Firearms have developed skills in arson investigation and investigation of the illegal use of explosives, which expertise is unequalled by any law enforcement agency in the country. The Bureau of Alcohol, Tobacco and Firearm's innovative approach begins with its "National Response Teams." The teams, composed of several groups of the Bureau's agents around the country, can be mobilized and dispatched to the scene of an incident within 24 hours. The work of these teams involves the cooperative efforts of state, local, and other federal agencies, all of which, in turn, work together with federal, state and local prosecutors to apprehend and convict arson and explosives violators. The efforts of the Bureau in aiding state and local law enforcement agencies in developing and implementing strategies for curbing such crime are is yet another testament of the Bureau's willingness to maintain alliance with state and local law enforcement agencies in a united front against crime and violence.

Though we believe that arson investigation is an important function, we do not view it as paramount to the firearms functions. Both the federal firearms and arson functions significantly contribute to state and local efforts to combat crime. Some may suggest that funds be earmarked for one or the other of these functions to ensure a certain level of enforcement. We believe that this would be a serious mistake. Our understanding of the changing nature of crime and of the operations of law enforcement agencies has taught us that decisions to emphasize certain areas of law enforcement should be left with agency administrators. This will provide the flexibility that will enable administrative officials to carry out their management responsibilities and to accommodate changing priorities. In exercising this discretion, officials remain accountable for the enforcement actions and priorities of the agency.

More than a decade ago, with the passage of the Gun Control Act of 1968, Congress recognized the need to establish a federal role in firearms law enforcement, a role that would emphasize the regulation of firearms commerce to prevent illegal trafficking in firearms. Now, more than a decade later, the need is greater than ever before. The obligation to perform this function remains pressing.

Mr. Chairman and members of the Subcommittee, if this Administration and this Congress are as serious about fighting crime as they have indicated, then you must avoid taking any actions that would fragment the firearms law enforcement function or diminish its prominence. In short, we are not overly concerned with the placement of the firearm functions, within the federal government; rather, we want here to emphasize the twin necessities of maintaining the function without fragmentation and preserving its prominence so that the federal government can be effective in its partnership with state and local law enforcement agencies as we all struggle to enforce our firearms laws.

SUFFICIENT FUNDING FOR LAW ENFORCEMENT

Senator ABDNOR. I guess you are saying it isn't so important who has it, just so they have adequate funds to do the job, more or less. Are you satisfied from what you have heard and what you have been able to detect that if it was to be transferred here, you think it would be funded? They are calling for—you can't predict us. But are you satisfied that it will have sufficient funds to retain the proper roles we expect them to play?

Mr. DUFFY. Senator, I am concerned that the fiscal picture for the Federal Government, like all levels of government, including my own at the county level, is very dim right now. I am concerned that certain things in law enforcement must have high priority.

It is my belief and the belief of my organization that the mission of ATF as currently envisioned is a very, very high priority, and even higher now than it was in 1968. I hope there would be sufficient funds to give them sufficient agents around the country to work with local law enforcement and fulfill that role that was envisioned in the preamble to the Gun Control Act and to regulate illegal aspects of firearms commerce.

Senator ABDNOR. In the event that funds were short, do you think the program would be better handled where it is today or do you think it would retain just as much attention in a period of lack of funds? I mean, do you think it would get a fair share for the purposes that the BATF has been using their funds?

Mr. DUFFY. It would be pure speculation, Senator, but I guess I would reiterate our position, that I don't think that is nearly so important as the mission or the unit of ATF remaining intact and being placed somewhere, perhaps within the Treasury Department. That is probably the most likely place, as was mentioned by a prior speaker. But that is not as important as some early action and early decision on where it should be placed. I believe the administration and the Congress can best decide where it goes; and, of course, it is the responsibility of the Congress to provide the funding for it.

Senator ABDNOR. Your point was well taken. I guess what you said is that really the morale of the BATF is not what it was because of this uncertainty going on today; isn't that correct?

Mr. DUFFY. That is correct, Senator. I believe the quicker it is resolved, the quicker we can get back on track.

Senator ABDNOR. Thank you. You have come from a long way off to help us. We are very appreciative of your statement and your answers here.

Mr. DUFFY. Thank you, Senator.

GUN OWNERS OF AMERICA

STATEMENT OF LAWRENCE PRATT, EXECUTIVE DIRECTOR, GUN OWNERS OF AMERICA

PREPARED STATEMENT

Senator ABDNOR. Our next witness is Lawrence Pratt from the Gun Owners of America. Mr. Pratt, you may proceed.

Mr. PRATT. Thank you, Senator. I appreciate the opportunity to be here today.

The Gun Owners of America has long opposed the often very outrageous enforcement practices of the Bureau of Alcohol, Tobacco and Firearms. We are convinced that the firearms enforcement of the 1968 Gun Control Act is simply not capable of being reformed and it shouldn't be funded. Crime control was the supposed aim of the 1968 Gun Control Act, and this has clearly not been accomplished.

I would like to cite a couple of examples. Then I will put the rest of them, if I might, in the record, with the testimony, so as not to trespass on your time.

Senator ABDNOR. Do you have a written statement?

Mr. PRATT. Yes, sir.

Senator ABDNOR. I assure you, Mr. Pratt, we will put the entire statement in the record.

[The statement follows:]

PREPARED STATEMENT OF LAWRENCE D. PRATT, EXECUTIVE DIRECTOR, GUN OWNERS OF AMERICA

Gun Owners of America has long opposed the often outrageous enforcement practices of the Bureau of Alcohol, Tobacco and Firearms (BATF). We are convinced that the Firearms enforcement of the 1968 Gun Control Act is not capable of being reformed. Crime control was the supposed aim of the 1968 Gun Control Act, and this has clearly not been accomplished.

Let me cite but a few of the examples of the abuses that have led to the demand for elimination of the Firearms enforcement of the BATF:

1. June, 1971—Without warning, four BATF agents, on a "routine inspection," kicked down the door of Ken Ballew's Maryland home. Ballew was shot four times by BATF agents and is now crippled for life. It was later discovered that all firearms in Ballew's collection were properly registered and legal.

2. October 30, 1978—In a para-military style operation, BATF agents invaded the Kirkland, Washington neighborhood of Mr. and Mrs. Elmer Tungren. A four block area was sealed off, neighbors were evacuated, and the Tungren home was surrounded. The Tungren home was then ransacked while the Tungrens were held at gun point with automatic rifles. A thorough search of the Tungren home revealed only a few rifles and a .22 caliber target pistol—all of which were properly registered.

Following the raid, Mr. Tungren told the press "It was like a bunch of storm troopers. We don't need this in our country." Then a lawyer from the American Civil Liberties Union—told newsmen "it sounds about as serious an action the government can take on a family."

3. October 4, 1977—As has happened to dozens of other law-abiding Gun Dealers, BATF rigged the arrest of H. W. Phillips, a Parksley, Virginia Gun Dealer, by making him the subject of a "strawman" sale.

An undercover BATF agent, presenting Delaware identification, tried to buy a gun from Phillips. Phillips refused to sell him a gun because it was illegal for him to sell firearms to nonresidents. Even though the BATF agent tried to force Phillips to violate the law, he did not succeed. The agent later returned with Virginia identification, but Phillips again refused to sell to him, believing that the credentials were falsified. BATF then sent in another BATF agent who was a Virginia resident, to try and buy the gun the non-resident was unable to buy. The agent presented proper I.D. and Phillips sold him the gun. The gun was then transferred by the resident to the non-resident and BATF agents then arrested Phillips for selling a non-resident.

In the trial that followed, the judge dismissed all charges against Phillips.

4. November 24, 1977—BATF agents raided Gus Cargile's home in Corpus Christi, Texas and confiscated 187 firearms. During the raid, agents dropped firearms—many of them valuable antiques—on a concrete floor. Then Cargile watched his valuable firearms get dented, chipped, and scraped as BATF agents piled his guns "like cordwood" in the front yard.

All charges against Cargile were dropped and a Federal Court ordered the return of all Cargile's guns. But BATF refused to give them back. It took Cargile 5 months and a costly law-suit just to get his guns returned. Then when they were finally returned, they were all rusted because BATF had stored them in a damp warehouse.

5. April 13, 1978—Frank Chismar, Joseph Paolucci, and Miss Brenda Thomson, all neighbors in Yonkers, N.Y., had their automobile run off the road by several carloads of undercover BATF agents. In a beating that was described by one eye-witness as "brutal, unmerciful, and vicious," Chismar was pistol whipped, kicked, and punched by BATF agents till he lost consciousness. Miss Thomson had her hands cuffed behind her back and was forced to kneel by the side of the road.

The BATF agents—supposedly looking for a lost pistol—never identified themselves. And when Paolucci told them he was going to report them to the local police, one BATF agent told him that "if he knew what was good for him, he'd keep his mouth shut."

No firearms of any kind were found on Chismar, Paolucci, or Miss Thomson.

6. Edwin Phillips, Vinton, Virginia—Phillips, a gun collector, was charged with "illegally engaging in the business of gun dealing" even though the Gun Control Act of 1968 is silent as to how many sales one must make in order to be classified as a dealer. Phillips had even phoned BATF and asked if he needed a federal firearms license to sell personal firearms at gun shows. BATF told him he didn't need a license and wouldn't be breaking the law. Yet they went ahead and arrested him for selling a total of three guns and charged him with being a dealer without a license!

The record of the BATF since the 1968 Gun Control Act has been one of gestapo-like tactics, beatings, woundings, entrapment and illegal seizure of property.

It has to be acknowledged that there has been a period of improvement in the last couple of years or so in the behavior of the BATF. GOA feels that this is only a tactical ploy to reduce the BATF's profile until the storm of controversy subsides.

The President campaigned on a platform including doing away with the BATF. We cannot accept as a solution what amounts to nothing more than changing the name plate on the door, and leaving in place the very people who will be free to resort to their earlier abuses once the heat is off.

Putting 1000 firmarms agents from an officially dissolved BATF into the Secret Service changes nothing. It could even be worse if the extraordinary powers available to the Secret Service were ever made available to the 1000 former firearms agents at BATF.

This committee has the opportunity right now to do what the supporters of the second amendment right to keep and bear arms thought they were getting in the 1980 elections. By defunding the 1000 firearms agents from BATF, you can solve the problem. By defunding these 1000 agents you can tell the gun owners of this country that the constitution protects them too, that they really do have a right to keep and bear arms, and that they really do have a right to their property and will not be deprived of it without due process of law.

There is still a large deficit looming in front of the federal government for next year. Please don't transfer an expensive operation with such a horrible record. We ask that you end the problem, and that you cut out the funds for these 1000 firearms agents.

Thank you very much.

CONCERNS OF U.S. GUN OWNERS

Mr. Pratt. Let me just try to give you a little flavor of some of the things that have been of grave concern to our organization and gun owners throughout the country, both people involved in the trade, gun dealers and craftsmen, as well as the average shooter and competitor and hunter.

There was a very infamous case over a decade ago in nearby Maryland suburbs where a gentleman by the name of Ken Ballew had his apartment broken into and after gunfire on the part of BATF he was left crippled for life. He has testified elsewhere in this Congress.

One of the problems that I think illustrates kind of an attitude of the BATF was brought to bear in a case in 1977 when some firearms were confiscated in a raid on a gentleman's home, Gus

Cargile's home, in Corpus Christi, Tex. They took almost 200 guns from him. None of them were found to be involved in any illegal activity. Yet it took him 5 months after he had been cleared of all charges to get the guns back from the BATF. They were quite willing to stare the court in the face. That has kind of been their attitude all along.

In a word, I think we could say that the record of the BATF during the time of the Gun Control Act of 1968 has been one of gestapo-like tactics which are just uncalled for in our country—beatings, woundings of innocent people, entrapment and illegal seizure of property.

It has to be acknowledged that there has been a period of at least apparent improvement in the last couple of years or so in the behavior of firearms people at the BATF. But GOA feels this is only a tactical ploy to reduce the BATF's profile until the storm of controversy subsides.

The President campaigned on a platform including doing away with the BATF. We cannot accept as a solution what amounts to changing the name plate on the door and leaving in place the very people who will be free to resort to their earlier abuses once the heat is off.

Putting 1,000 firearms agents from an officially dissolved BATF into the Secret Service, or wherever else, really changes nothing. It could even be worse if the extraordinary powers available to the Secret Service were ever made available to the 1,000 former firearms agents of the BATF.

RIGHT TO KEEP AND BEAR ARMS

I think this committee and this Congress has the opportunity right now to do what the supporters of the second amendment, the right to keep and bear arms, thought they were getting in the 1980 elections. By defunding the 1,000 firearms agents from BATF you can solve the problem. By defunding these 1,000 agents you can tell the gun owners of this country that the Constitution protects them, too. They really do have a right to keep and bear arms and they really do have a right to their property and will not be deprived of it without due process of law. So I think we would very much celebrate any effort that would go toward that end.

We think that money thrown at the firearms division, or wherever those people might end up, is going to be good money after bad. Until the Congress and State legislatures can both wrestle with tougher penalties for violent criminals, we don't think there is going to be a solution to the crime problem in our country. That is supposedly what gun control is supposed to address. It has not. We think the money should be directed, if you are going to spend money in this area, other places.

Thank you very much.

Senator Abdnor. Thank you, Mr. Pratt.

IMPROVEMENT IN BATF TREATMENT OF GOA

You do feel there has been some improvement, though, over the last few years from some of the earlier incidents?

Mr. Pratt. From my personal observation——

Senator Abdnor. I know you don't like it at all.

Mr. Pratt. Yes, sir. From my personal observation of the agents, even in hearings before the Congress, the contempt that they have for people that they have in some cases brutalized in the past, when they sit in these very committee rooms, is very obvious. It is clear to me that they have no intention of backing off or changing their ways. So I think the only thing you can do with people who have been brought up in an environment like that and seem to view law enforcement in that regard is to get rid of them.

Senator Abdnor. You would be doing away with the ATF. It doesn't bother you, we would also be doing away with the liquor enforcement, tobacco enforcement.

Mr. Pratt. I tried to be specific.

Senator Abdnor. I know. You do recognize that. Would you say there is a need for the other part of it?

Mr. Pratt. We don't have a position on that. That has not been a problem as far as the gun owners are concerned.

Senator Abdnor. Let me say this: To repeal the gun law you are speaking of would require action not of this committee. I think it would be another committee.

Mr. Pratt. I agree. We are working on that with other parts of the Congress. And especially if we are successful in that area, these people would be more supernumerary than before.

Senator Abdnor. We get down to the place where all the repealing is done, and something is going to be done, where would you prefer to see it, with BATF or the Secret Service?

RISE IN TERRORISM

Mr. Pratt. The problems that were referred to today that are other than those dealing with guns—I think one of the greatest concerns certainly that people have in the media is the possibility of a rise in terrorism. I think that is something that the FBI is more suited to. But I don't think these are the people that should be doing that. I think that is something that again there is legislation enabling the FBI to act more effectively in that area. Money for these men is not going to help.

Senator Abdnor. Let's assume this remains in effect, the law on the gun control. If you had the worst of all worlds, what do you think it would be?

Mr. Pratt. The worst of all worlds might be about 10 to 20 people to carry out the legitimate tracing functions that could probably be very easily handled by a couple handfuls of people.

Senator Abdnor. In other words, we are talking about the Treasury proposal. It would go to the Secret Service. I am just asking you——

Mr. Pratt. That is a non-solution for us. That just transfers the problem but continues it.

Senator Abdnor. Thank you very, very much.

Mr. Pratt. Thank you.

NATIONAL COALITION TO BAN HANDGUNS

STATEMENT OF MICHAEL BEARD, BAN HANDGUN COALITION

PREPARED STATEMENT

Senator ABDNOR. Ban Handgun Coalition, Michael Beard.

Mr. BEARD. Mr. Chairman, my name is Michael Beard. I am president of the National Coalition to Ban Handguns—NCBH. Accompanying me today is Sanford Horwitt, special assistant to the coalition.

We have submitted for the record an extensive written statement. We would like to have that submitted for the record. I will summarize it briefly.

Senator ABDNOR. It will be placed in the record.

[The information follows:]

PREPARED STATEMENT OF MICHAEL K. BEARD, PRESIDENT

NATIONAL COALITION TO BAN HANDGUNS

Mr. Chairman and distinguished Members of this Subcommittee:

My name is Michael K. Beard and I am President of the National Coalition to Ban Handguns (NCBH). Accompanying me today is Leonard Simon of the law firm Arnold & Porter.

On behalf of the over 100,000 individual members and the over thirty national religious, medical, legal, professional, labor, and educational associations and citizen public interest groups making up the National Coalition to Ban Handguns, I would like to thank the Chairman and the Subcommittee for this opportunity to share our views regarding the enforcement of federal firearms laws.

As we are all aware, the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (BATF) has been the agency responsible for enforcing federal firearms laws since the early 1970's. On November 12, 1981, the Reagan Administration announced that BATF would be abolished, with firearms and explosives law enforcement being transferred to the Secret Service and alcohol and tobacco law enforcement moving to the Customs Service.

Mr. Chairman, you do not need to be told that handgun violence -- and the fear of such violence -- is a very serious problem in our nation. No one is immune from handgun crime. We should not forget that eleven short months ago, we all sat nervously in front of our television sets awaiting the news about the condition of President Reagan after he became one of last year's estimated 300,000 handgun crime victims.

NCBH believes that the single most important consideration that faces the Congress regarding the proposed reorganization of BATF responsibilities is not so much which agency is responsible for federal firearms law enforcement but rather the resources which will be available for truly effective enforcement -- an adequate budget, sufficient personnel, and a serious commitment to enforce the law.

The Administration's plan to transfer firearms law enforcement to the Secret Service is intriguing and worthy of serious consideration by the members of this Subcommittee. According to a July 1981 management review report conducted by the Treasury Department's Office of Enforcement and Operations:

> "Whatever motivation there may have been in the past for placing the function of enforcement of firearms and explosives laws in the same bureau responsible for alcohol and tobacco revenue collection and regulation, it can no longer be rationalized today."

This argument seems to be quite valid.

In its February 4, 1982 Report on the Bureau of Alcohol, Tobacco and Firearms Reorganization, the Treasury Department stated that the proposed transfer:

> ". . . will result in a more efficient enforcement of the firearms, explosives and arson statutes with fewer people and less cost by . . . putting these functions into a strictly law enforcement organization as opposed to an organization that placed great emphasis on regulation and revenue protection of two commodities in areas totally unrelated to the enforcement of the firearms and explosives laws. The Secret Service is strictly a law enforcement organization."

There is little doubt that firearm law enforcement is consistent with the overall protective mission of the Secret Service. Enforcing the Gun Control Act of 1968, however, includes not only law enforcement, but also considerable regulatory functions -- such as licensing of firearms dealers and conducting routine inspections of dealer premises. NCBH has found that BATF has not been stringently enforcing the regulatory aspects of the 1968 Gun Control Act.For example, NCBH and the Connecticut Committee for Handgun Control conducted a study ["Compliance of Federal Firearms Licensees With Federal, State and Local Laws and Standard Business Practices"] to:

> " . . . determine the proportion of federally licensed firearms dealers conducting bona fide businesses [in the greater metropolitan New Haven, Connecticut area] in compliance with federal, state and local firearms licensing laws and other laws that regulate the business of dealing in firearms."

This 1980 study's finding that "at least two-thirds of the licensees studied are not entitled to their licenses" was consistent with the earlier estimates made by David R. MacDonald, Treasury Assistant Secretary for Enforcement, who testified before a Senate Judiciary Committee in 1975 that "less than 30 percent [of federal firearms dealers] actually conduct a bona fide business." NCBH is presently involved in a federal lawsuit against BATF [National Coalition to Ban Handguns, et al. v. Bureau of Alcohol, Tobacco and Firearms, et al., No. 80-3176] since it appears that BATF has exercised virtually no selectivity in issuing federal dealer's licenses. We believe it is very important that the Secret Service assure the Congress that these regulatory functions will be strictly enforced if this agency becomes the enforcer of the Gun Control Act of 1968.

NCBH is well aware that the Secret Service is one of the most publicly respected law enforcement agencies in the federal government and for good reason -- this agency does an exemplary job. In contrast, the history of BATF is, in spite of good intentions, one of failed objectives, unclear priorities, intimidation by the gun lobby, budget fights, and loss of morale among employees. The Treasury Report on BATF Reorganization mentions,

> "The transfer to the Secret Service should bring about a much-needed improvement in the morale and self image of ATF personnel who are reassigned by placing them in an organization with a high level of morale and an excellent public image. These factors taken by themselves contribute to greater productivity."

Although "improvement in morale and self image" are important, we feel that much more is needed to improve productivity.

NCBH would like to bring to your attention the remarks made by John Walker, Treasury Assistant Secretary for Enforcement and Operations, before the House Subcommittee on Crime on December 16, 1981. Secretary Walker stated in his prepared testimony that,

> "The plan to reassign firearms and explosives criminal law enforcement functions presently being performed by ATF is also motivated by significant urgent needs of the Secret Service. First and foremost of these is a need which the Service has for additional resources in its protective effort."

Likewise, the February 1982 Treasury Department statement mentioned,

> "This transfer [of firearms law enforcement responsibilities to Secret Service] will give the Secret Service the ability to draw on additional resources badly needed for its protective mission."

We are quite concerned by these statements. The protective duties of the Secret Service are, of course, extremely important but so is federal firearms law enforcement. The Treasury Department's management review which was conducted after the assassination attempt on President Reagan last year concluded that there must be an increase in manpower and financial resources in the Secret Service in order for that agency to continue its high level of protective services. NCBH firmly believes that both protective services and firearms law enforcement deserve sufficient resources in order to be effectively and efficiently carried out -- one function should not be sacrificed for the other. We hope that this Subcommittee and the Congress as a whole will not sacrifice one function for the other -- the stakes are much too high for this sacrifice to occur.

Although placing firearms law enforcement with the Secret Service is an appealing idea, another proposal which we feel is worthy of consideration is the transfer of responsibilities from the Department of the Treasury (as stipulated in the Gun Control Act of 1968 [PL 90-618]) to the Justice Department. This proposal is included in the Kennedy/Rodino Handgun Crime Control Act of 1981 (S 974/HR 3200) and in HR 5043, which was introduced by U.S. Rep. William Hughes. A transfer to the Justice Department rather than the Secret Service would require that the current law be amended. Nevertheless, this option should not be overlooked. Since there presently appears to be an absence of regulatory/administrative functions within the Justice Department, it may be advisable to devise a plan whereby the regulatory functions required by firearms laws remain in the Treasury Department while the criminal investigatory and prosecutorial functions move to the Federal Bureau of Investigation and the Justice Department. NCBH would be happy to sit down with interested parties to help devise such a plan.

Again, we would like to emphasize our firm belief that the key issue before you and the rest of the Congress is the level of firearms law enforcement. The shape of the badge or the wearer of the badge is no more important than the resources committed to effectively enforce the Gun Control Act of 1968 and other federal firearms laws. In order for this enforcement to take place, the agency responsible for this function must be sufficiently funded. In an article which appeared in the September 18, 1981 edition of the New York Times, Glenn R. Dickerson, the Director of BATF, stated "I think we're being destroyed by [budget] cuts that are in a large measure due to the NRA campaign against us." Too many American lives are at stake to allow a special interest group to weaken federal firearm law enforcement. Let us leave this hearing room today agreeing that a similar fate should not befall BATF's successor.

Unfortunately, the time has come to admit that BATF has appeared to have outlived its usefulness and has, in effect, been destroyed by a massive, cynical campaign waged by the National Rifle Association. When asked last year by The Washington Post to comment on a NRA film attacking BATF, Director Dickerson (an NRA member) replied, "I think the movie is garbage. But if they [NRA] really push this as they can do . . . with a massive public affairs campaign, I think its very likely that they may indeed put ATF out of business." The demise of BATF has apparently happened, but perhaps the burial of BATF is an example of the right thing happening for the wrong reason.

Mr. Chairman, thank you again for showing your concern about federal firearms law enforcement by holding these hearings today. NCBH feels that the United States must move towards stricter enforcement of already existing handgun control laws, as well as move towards strengthening current laws. We are, however, reluctant to give unqualified support to any reorganizational plan unless there is a reasonable expectation for adequate budget, personnel, and political support for an effective firearms law enforcement program. As is the case in any reorganizational plan, responsibility may be transferred but not the proper funding and personnel. Nevertheless, it appears that BATF has not been doing an effective job -- on the whole, too little has been done to combat the criminal use of firearms.

The actions taken by this Appropriations Subcommittee will have an important impact on whether or not the governmental agency eventually given responsibility for enforcing handgun control laws can actually do its job or merely exist in name only. We hope the Subcommittee's actions will be in the public interest and will not be compromised in any way by the selfish concerns of a small but well financed special interest. The time is long overdue that we make the maximum effort to enforce firearm laws and make this a safer, less violent nation.

ENFORCEMENT OF FEDERAL FIREARMS LAWS

Mr. **Beard**. On behalf of the over 100,000 individual members and the over 30 national religious, medical, legal, professional, labor, and educational associations and citizen public interest groups making up the National Coalition to Ban Handguns, I would like to thank the chairman of this subcommittee for this opportunity to share our views regarding the enforcement of Federal firearms laws.

Mr. Chairman, you do not need to be told that handgun violence, and the fear of such violence, is a serious problem in our Nation. No one is immune from handgun crime. We should not forget that 11 short months ago we all sat nervously in front of our television sets awaiting the news about the condition of President Reagan after he became one of last year's estimated 300,000 handgun crime victims.

NCBH believes that the single most important consideration that faces the Congress regarding the proposed reorganization of BATF responsibilities is not so much which agency is responsible for Federal firearms law enforcement but, rather, the resources which will be available for truly effective enforcement—an adequate budget, sufficient personnel, and a serious commitment to enforce the law.

The administration's plan to transfer firearms law enforcement to the Secret Service is intriguing and worthy of serious consideration by the members of this subcommittee.

There is little doubt that firearm law enforcement is consistent with the overall protective mission of the Secret Service. Enforcing the Gun Control Act of 1968, however, includes not only law enforcement but also considerable regulatory functions—such as licensing of firearms dealers and conducting routine inspections of dealer premises. NCBH has found that BATF has not been stringently enforcing the regulatory aspects of the 1968 Gun Control Act. For example, NCBH and the Connecticut Committee for Handgun Control conducted a study in 1980 which found that "at least two-thirds of the licensees studied are not entitled to their licenses."

STUDY ON HANDGUN LICENSEES

Mr. Chairman, I would like to insert a copy of this study into the record.

Senator **Abdnor**. It will be included in the record.

[The information follows:]

A REPORT

COMPLIANCE OF FEDERAL FIREARMS LICENSEES WITH FEDERAL, STATE AND LOCAL LAWS AND STANDARD BUSINESS PRACTICES

"Basically I have guns because I like them and keep them as a hobby. I've got a federal dealer's license and I can probably get one for you."

-- Federal Firearms Licensee

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I. EXECUTIVE SUMMARY

A study was conducted to determine the proportion of federally licensed firearms dealers that are bona fide businesses operating in compliance with federal, state and local law.

The one hundred thirty-six holders of federal firearms dealers' licenses in the New Haven, Connecticut metropolitan area were selected as subjects. All 136 were studied on the basis of public information obtained from the Bureau of Alcohol, Tobacco and Firearms (BATF), as well as Connecticut state and local officials. Additionally, nonobtrusive interviews (in which the interviewer requested information as a potential buyer) were conducted with the 108 licensees that were reachable by telephone.

Overall, more than three-fourths (77.2%) of licensees were in direct violation of at least one federal, state, or local law or regulation. Nearly one-half (48.5%) were in violation of two or more firearms, tax, or zoning requirements.

A common violation involved the sale of handguns in violation of state and local licensing laws. Nearly two-thirds (63.6%) of the dealers holding themselves out as sellers of handguns did not possess valid state or local licenses. (A violation of state firearms licensing laws is also a violation of federal law.)

In addition, over two-thirds (69.1%) of all licensees did not appear to be bona fide businesses. It is unlawful to obtain a license without intending to conduct a bona fide business. Yet only 8.5% of the licensees listed their telephone in the Yellow Pages; 48.7% of the licensees required to do so did not maintained regular business hours; nearly half of those reached answered their telephone with a "nonbusiness" response. Over one-fifth of all the licensees (22.1%) admitted outright to not conducting a regular business; a further one-fifth (18.3%) of the ostensible businesses could not be contacted by any reasonable means. Of the licensees who professed actively to use their licenses, 39 out of 81 (45%) could not reasonably be considered bona fide commercial enterprises.

The study concluded that at least two-thirds of the licensees studied are not entitled to their licenses.

II. PURPOSE

The purpose of the study was to determine the proportion of federally licensed firearms dealers conducting bona fide businesses in compliance with federal, state and local firearms licensing laws and other laws that regulate the business of dealing in firearms.

The proposition being tested was stated generally by David R. MacDonald, Assistant Secretary of Treasury, for Enforcement, who testified on April 23, 1975 that "less than 30 percent [of federal firearms dealers] actually conduct a bona fide business."[1] MacDonald characterized the remaining 70% as "nominal" licensees, who obtained licenses for personal use or use by friends.

Accordingly, the study attempted to analyze all the licensees in a particular area, to determine the number holding a license in apparent violation of federal, state and local laws. The particular violations studied included:

- obtaining a federal firearms dealer's license without conducting a bona fide business;
- selling handguns in violation of state and local licensing laws;
- operating in violation of state tax requirements;
- operating in violation of local zoning requirements.[2]

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[1] Handgun Crime Control: Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., at 52 (statement of David R. MacDonald)(April 23, 1975).

[2] Legal counsel concerning the requirements of applicable law was provided by S. Mark Tuller, Esq., of the law firm of Arnold & Porter, Washington, D.C.

III. FACTUAL BACKGROUND

The history of federal involvement in the conduct of firearms dealers goes back to the National Firearms Act (NFA) of 1934.[3] As part of a program to control so-called gangster weapons -- submachine guns -- a licensing system was established for all dealers in such weapons.

Four years later, in 1938, the Federal Firearms Act expanded the licensing system to include all interstate commercial transactions.[4] Annual license fee was set at $25.00 for manufacturers and $1.00 for dealers. Dealers were required to keep records of transactions and were prohibited from making sales to persons in certain categories including felons, persons under indictment, fugitives, and out-of-state buyers from jurisdictions where such purchases required a license. Enforcement for the law was placed in the hands of the Secretary of the Treasury who assigned the responsibility to the Internal Revenue Service.[5]

The effectiveness of the 1938 Act in policing the commercial aspects of the firearms industry was questionable: "[T]he modest cost of a dealer's license and the fact that dealers could freely receive firearms in interstate commerce created strong incentives for private parties to receive dealer licenses. . . . (over 100,000 in the mid-1960's) and made any serious effort to monitor dealer compliance . . . an enormous undertaking."[6]

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[3] National Firearms Act, 48 Stat. 1236 (1934), as subsequently amended.

[4] Federal Firearms Act, 52 Stat. 1250 (1938), repealed by Pub. L. No. 90-351, § 906, 82 Stat. 234 (1968).

[5] Federal Firearms Act, § 7, 52 Stat. at 1252 (1938); T.D. 4834, 1938-2 Cum. Bull. 465, 467.

Following a dramatic rise in violent crime and the assassinations of President John F. Kennedy, Rev. Dr. Martin Luther King, and Senator Robert F. Kennedy, the Congress passed and President Lyndon B. Johnson signed into law the Gun Control Act of 1968.[7]

Among the areas that were meant to be tightened was the requirement for dealer licensing:

> "License fees increased from one dollar to ten dollars per year and minimum requirements for dealers were set. Persons applying for a dealer's license sent their applications and fees to the district director of the Treasury Department's newly formed Bureau of Alcohol, Tobacco and Firearms. After depositing the fee, the district director fowarded the application to the Regional Regulatory Administrator (RRA) of the Bureau. Title 27 of the Code of Federal Regulations mandates that the administrator approve the firearms application if the applicant:
>
> o Is twenty-one years or older;
>
> o Is not prohibited from dealing in firearms under the provisions of the Gun Control Act of 1968;
>
> o Has not willfully failed to disclose any required information or made false statements on the application;

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[6] Zimring, "Firearms and Federal Law: The Gun Control Act of 1968," 1973 J. Legal Stud. 133, 140-41 (1973) (footnote omitted).

[7] Pub. L. No. 90-618, 82 Stat. 1213 (1968).

- o Has legal premises from which to conduct business; and
- o Is not a person ineligible to buy or possess firearms.

The RRA must approve or deny the application within 45 days after receiving it."8/

Under the present law, the 1968 Gun Control Act, persons conducting commercial firearms activities must obtain an appropriate license.9/ By far the most common license issued is the firearms dealers license (type 01).

TYPE	LICENSE	ANNUAL FEE	NUMBER OF LICENSES AS OF NOV. 29, 1979 10/
01	Dealer in firearms other than destructive devices or ammunition for firearms other than destructive devices.	$10	154,117
02	Pawnbroker dealing in firearms other than destructive devices or ammunition for firearms other than destructive devices.	$10	3,394
03	Collector of curios and relics.	$10	4,986
06	Manufacturer of ammunition for firearms other than destructive devices.	$10	8,048
07	Manufacturer of firearms other than destructive devices.	$50	457

8/ A. Garner and M. Clancy, Firearm Statutes in the United States, United States Conference of Mayors (1979), restating requirements found in 27 C.F.R. § 178 et seq. and 18 U.S.C. § 923.

9/ 18 U.S.C. § 923(a)(1), (2) and (3); (b).

10/ Personal communication with Karen Brumbaugh, Disclosure Specialist, Bureau of Alcohol, Tobacco and Firearms, February 12, 1980.

TYPE	LICENSE	ANNUAL FEE	NUMBER OF LICENSES AS OF NOV. 29, 197
08	Importer of firearms other than destructive devices or ammunition for firearms other than destructive devices.	$50	428
09	Dealer in destructive devices or ammunition for destructive devices.	$1000	5
10	Manufacturer of destructive devices or ammunition for destructive devices.	$1000	32
11	Importer of destructive devices or ammunition for destructive devices.	$1000	12
		TOTAL	171,935

Since the passage of the 1968 Act numerous questions continue to be raised about the enforcement of commercial firearms licensing. On April 23, 1975, David R. MacDonald, Treasury Assistant Secretary for Enforcement, testified that "less than 30 percent [of federal firearms dealers] actually conduct a *bona fide* business. . . ." The remaining 70% were categorized as "nominal" who obtained licenses for personal use or use by friends.[11]

In the summer of 1978, a pilot project to investigate the claims of the Assistant Secretary was conducted in Chicago.[12] A total of 171 retail licensees were used in the pilot study; 79 were reached while 92 were unreachable. Of the 79 reached the interviewers were able to establish 28 firearms law violations and 14 zoning violations. On the basis of this preliminary survey it was decided to select a second site and conduct a more controlled and detailed study.

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[11] *Handgun Crime Control Hearings*, *supra*, at 52.

[12] Headed by Steven Masters, Connecticut Committee for Handgun Control. Sample included all 01 and 02 licenses in Cook County, Illinois.

IV. METHODOLOGY: SAMPLE, CRITERIA TESTED, PROCEDURES

The study tested federally licensed firearms dealers (01 licensees) in the New Haven, Connecticut metropolitan area. Subjects were tested for compliance with nine critera, each of which is either a direct statutory or regulatory requirement or has been relied upon in a legal or regulatory context as an indicium of bona fide business practice. Controlled nonobtrusive interviews were conducted and examination of public records was completed.

A. Sample Used

A list of federal firearms license holders in the state of Connecticut was obtained from the Bureau of Alcohol, Tobacco and Firearms, in April 1979. The list was narrowed to all holders of 01 type licenses (dealers) within local calling range of New Haven, Connecticut. Nationally, dealers represent 89.9% of all licensees. Licensees located within the area of local telephone dialing from New Haven were selected to help preserve the nonobtrusive aspects of the interview. Under these criteria a sample of 136 was achieved, amounting to a 100% sample of area dealers.[13/]

B. Criteria Tested

Five "legal" criteria and four "business indicium" criteria were tested. Each legal criterion is a direct requirement of state, local or federal law, or all three. Each "business indicium" criterion is a commercial characteristic of bona fide firearms businesses, the absence of which tends to indicate the licensee is not conducting a bona fide business.

1. Legal

a. The licensee (if engaged in the sale of pistols or revolvers) does not possess an appropriate license under Connecticut law. The federal statute, 18 U.S.C. § 922(b)(2), makes it a violation of federal law for a federally licensed dealer to sell firearms to any person in violation of applicable state law. See Mayesh v. Shultz, 58 F.R.D. 537 (S.D. Ill. 1973); United States v. Decker, 335 F. Supp. 1168, (W.D. Mo. 1970), aff'd, 446 F.2d 146 (8th Cir. 1971). The principal state law in Connecticut is Conn. Gen. Stat. §§ 29-27, 28, and 31 (see Appendix A), providing in essence that sale of pistols or revolvers must be subject to a permit issued by the local chief of police.

[13/] The original sample of 137 was narrowed to 136 when it was learned that one of the subjects had recently died.

b. The licensee had discontinued operations without proper notice to BATF. Under 27 C.F.R. § 178.57, a licensee must give written notice of going out of business to the appropriate Assistant Regional Commissioner within 30 days after going out of business. Likewise, 27 C.F.R. § 178.127 requires licensees to deliver their firearms dealer records to the Regional Commissioner within 30 days after going out of business.

c. The license is issued to a building not zoned for commercial use. A dealer maintaining a license for premises that are not commercially zoned under the local zoning ordinances is culpable either for violating local law or federal law. If the licensee is actually conducting a retail gun business from the licensed premises, local law prohibiting the commercial use of residential property is violated. Alternatively, if the licensee is not conducting a commercial business from the licensed premises, the federal requirement that licensed dealers must intend to engage in a bona fide business (18 U.S.C. § 923) is violated.[14/] In either event the licensee is in violation of law.

[14/] In Bonham v. ATF Division, Civil Action 3244-2 (M.D. Ala. April 2, 1971) (per F. M. Johnson, Jr.) (see Appendix B), the court relied upon the fact that the licensed premises were not zoned for commercial use and thus presumptively were not business premises open to the public, as required for license eligibility under 27 C.F.R. § 178.11. Additionally, Bureau of Alcohol, Tobacco and Firearms Order 5030.2A, p. 13, requires federal agents to report "possible violations of local zoning ordinances such as where businesses are being conducted in residential areas." (See Appendix C).

d. The licensee operates from a location not specified in the license. Under 27 C.F.R. § 178.52, all changes of address must be reported to the appropriate Assistant Regional Commissioner and approved for a new licensed premises to be obtained.

e. The licensee has failed to obtain a state sales tax license. Under Connecticut state law all businesses must obtain a state sales tax number and collect the appropriate revenue. 12 Conn. Gen. Stat. Ann. § 409(1)-(7). (See Appendix D). As with violations of the zoning regulations, the failure of the licensee to possess such a license demonstrates either that the licensee is conducting a sales business in violation of state law, or, alternatively, that the licensee is maintaining a federal dealer's licensee without conducting a bona fide business.

2. Business Indicia

a. The licensed premises do not have regular business hours. Under the federal statute, 18 U.S.C. § 923(d)(1)(E), an applicant for a federal license must have "premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time." Lack of business premises and lack of intent to conduct business are evident from, among other things, lack of regular business hours. In Bonham v.

ATF Division, Civil Action 3244-2 (M.D. Ala. April 2, 1971) (see Appendix B), an applicant purporting to have business hours only between 5:00 p.m. and 6:30 p.m. on Fridays was denied a federal license for failure to comply with the Act in this respect.

b. The licensed premises are not open to the general public. The statutory requirement of "business premises" of 18 U.S.C. § 923(d)(1)(E) is elaborated by regulations appearing at 27 C.F.R. § 178.11, which define "business premises" as follows: "The property on which firearms or ammunition importing, manufacturing, or dealing business is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term." In the Bonham case above, the exclusive clientele of the licensee -- close friends and family -- was relied upon in conjunction with the residential zoning of the premises as indicative that the public was not admitted to the licensed premises. (See Appendix B).

c. The licensee does not advertise a business telephone number. If the subject stated that his primary or only occupation at the license address was firearms related, researchers checked to see if he was listed in the Yellow Pages under "Guns." Failure to use advertising is regarded by the BATF as indicative that no bona fide business is being conducted. See ATF Order 5300.3.

d. *The licensee does not make a business phone response*. The failure of a licensee to answer telephone calls with a business-like phrase, such as "Gun shop," was regarded as indicative of not conducting a bona fide business. *See* ATF Order 5300.3.

C. *Procedures*

All information, whether interview or archival, was kept on data sheets (*see* Appendix E).

Researchers attempted to find telephone numbers for each of the dealers in the sample. They tried to find a telephone number listing under the business address given on the BATF list, looking both under the business name (if given on the BATF list) and under the licensee's name. They first looked in the Yellow Pages under "Guns." If not found, researchers looked in the White Pages. If still not found, they checked with Directory Assistance. Some phone numbers could not be found at the business address given on the ATF list, and it was so noted. The researchers then tried to find a phone number for these "Can't Finds" at a different address listed under the dealer's name or business name. If they could not find such an "Alternative Address," it was again so noted.

The source of the phone number (Yellow Pages; White Pages; Directory Assistance, Listed; Directory Assistance, Unlisted; or Couldn't Find) was noted, and the type of phone listing (Business or Home) was noted. Those people who had unlisted phone numbers that could not be found were subject to archival research alone.

Researchers began calling on the morning of Monday, April 30, 1979. They attempted to reach every dealer during daytime hours at least three times. At least one of these times was during the morning hours (between 9:00 a.m. and 11:30 a.m.) and at least one was during the afternoon hours (between 1:00 p.m. and 4:30 p.m.). At least one of these times was on a Monday or a Wednesday and at least one was on a Tuesday or a Thursday.

Some dealers were not reached during these three daytime attempts, and they were called at least three times during the evening hours (between 7:00 p.m. and 10:00 p.m.). All daytime phone calls and evening phone calls were made during weekdays -- not during weekends. The time that the dealer was contacted was noted by the interviewer, and if no contact was ever made (after at least six attempts), it was so noted. An attempt was defined as successful if the federal dealer was spoken to by the interviewer. An attempt was defined as unsuccessful if the phone was unanswered after ringing at least 60 seconds or if the phone was answered and the interviewer was informed that the licensee was not present at that time. All phone call attempts were completed by Friday, May 11, 1979.

All researchers were supplied with a flow chart (see Appendix F) describing in detail what facts should be secured and what responses should be given to predictable questions that might be asked by licensees. (Type of weapon, reason for purchase, etc.). Standard responses to other questions were also supplied. (See Appendix G).

When contact was made with the dealer, the interviewer asked the dealer if he would be willing to sell a gun to him (the interviewer), particularly a handgun. The interviewer then recorded whether the dealer sold guns, whether he sold handguns, whether he just did gunsmithing, whether he just did expert work or consulting, whether the dealer claimed to have nothing to do with guns, or whether the dealer claimed to be retired from the gun business. The interviewer than recorded whether the dealer was willing to sell to a specific group of customers (friends only, police only, distributors only, etc.). Responses were recorded on the response sheet.

After the phone calls were completed, researchers checked the zoning classifications where each dealer conducted business. They found the zoning classification of each licensed address and each "alternative address" (if they were able to find where the dealer had moved to). Once the zoning classification was known, researchers went through each town's zoning regulations to determine if a person could properly conduct a retail gun store or do gunsmithing in that particular zone. If the business was located in an improper zone, researchers sought to determine if that person had applied and received a zoning variance or exception. Local zoning officials were consulted to confirm information on permissible uses and variances. Zoning checks were made during late May 1979 and late August 1979.

After the phone calls were completed, researchers began to determine which dealers had obtained handgun dealers permits from their local police. Researchers contacted the police department in each town and obtained a list of people in town who had purchased Connecticut handgun dealers permits. Handgun permit checks were made during late May 1979 and late August 1979.

In August 1979, researchers sent in a request to BATF to obtain photocopies of the license applications of each of the dealers in the survey. Also sent to BATF was a list of names of those dealers who had indicated to callers that they had discontinued their business or had moved. BATF was asked if they had been so notified by the dealers, as required by regulation.[15] Researchers received this information in Washington, D.C., in September 1979.

In August 1979, a list of the dealers was sent to the Connecticut Sales Tax Office. Sales tax officials were asked which of the licensees had been issued Connecticut

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[15] 27 C.F.R. § 178.57. See also 27 C.F.R. § 178.127.

Sales Tax Permits. The final state report was delivered to researchers in January 1980.

V. RESULTS

A. Demographics

There were 136 licensees in the sample. Based on recent BATF printouts, 42 (30.8%) were corporations, and 94 (69.2%) were noncorporate licensees. Among the noncorporate licensees, 89 (94.6%) were single ownership and 5 (5.4%) were partnerships. Among all 100 noncorporate licensees, 96 (96%) were male and 4 (4%) were female.

According to license address the subjects conducted business in 16 different towns and cities:

TABLE I

CITY OF LICENSE ADDRESS

City	Number of subjects	Percentage
Bethany	2	1.5
Branford	14	10.3
Cheshire	8	5.9
Devon	1	0.7
East Haven	7	5.1
Hamden	15	11.0
Milford	14	10.3
New Haven	13	9.6
North Branford	2	1.5
North Haven	21	15.4
Northford	4	2.9
Orange	5	3.7
Stoney Creek	1	0.7
Wallingford	16	11.8
West Haven	12	8.8
Woodmont	1	0.7
TOTAL	136	100.0 %

Eight of the licensees no longer conducted business at the license address and were located in different cities:

TABLE II

CITY OF CHANGED ADDRESS

City	Number of subjects
Brookfield	1
Cheshire	1
Devon	1
Meriden	1
Milford	1
North Branford	2
Wallingford	1
TOTAL	8

Surveyors were able to contact 111 licensees, all of whom indicated the type of activity they engaged in.

TABLE III

LICENSEE SALES ACTIVITIES

Type of Guns Sold	Number of subjects	Percentage
At least handguns	44	32.4
Non-handguns only	31	22.8
Spearguns only	1	0.7
Gunsmithing only	5	3.7
Don't sell, retired	8	5.9
Don't sell at all	22	16.2
Not reached	3	2.2
Unlisted	15	11.0
Couldn't find	7	5.1
TOTAL	136	100.0%

The chart immediately above shows the distribution of license use. Only 81 licensees (59.6%) claimed to be actively using the license. Of the remainder, 30 licensees (22.1%) were either retired or claimed not to use the license at all. An additional 25 licensees (18.3%)

were unreachable and therefore could not offer testament as to their activity.

Many of the licensees that limited their activity readily conceded as much. For example:

> (1) "I have a federal license, but I haven't dealt guns in a long time."
>
> (2) "I've got a FFL, I'm really just a collector."

Other licensees responded with a suspicious answer:

> (3) "A gun? I don't sell guns. Who is this? . . . What kind were you looking for? . . . Why don't you call back in a few days."

B. Legal Compliance

1. Sale of handguns without local license

A total of 44 licensees held themselves out as willing to sell a handgun. Nearly two-thirds of these (63.6%) did not possess a local license.

TABLE IV

LOCAL LICENSES

(HANDGUN SELLERS)

	Number of subjects	Percentage
State/local license to sell handguns	16	36.4
No state/local license to sell handguns	28	63.6
TOTAL handgun sellers	44	100.0%

Individuals selling handguns without proper state licensing spoke freely about their business, apparently without any fear of the law:

> (1) "Just come over and look at the catalog and you can pick one out."
>
> (2) "There's no basic problem. I can get anything."
>
> (3) "Uh, huh, all I've got right now is a Python . . . do you know where Tyler Place is?"

2. Licensee discontinued business

The 30 licensees that professed to being out of business and the 25 licensees that could not be reached after all reasonable attempts were regarded as not intending to conduct a bona fide business for purposes of license eligibility. Among 29 of the 30 self-admitted nonbusinesses, none had complied with BATF requirements for notification and return of records. Data was unavailable on one subject.

TABLE V

BATF NOTICE

(DISCONTINUED BUSINESSES)

	Number of subjects	Percentage
Notified BATF	0	.0
Failed to notify BATF	29	100.0
TOTAL discontinued	29	100.0%

3. Zoning, variance and exceptions compliance

Most of the licenses (61.8%) were issued to noncommercial addresses.

TABLE VI

ZONING COMPLIANCE

(ALL LICENSEES)

	Number of subjects	Percentage
Zoning compliance	52	38.2
Zoning noncompliance	82	61.8
TOTAL	136	100.0%

Among the 81 licensees who indicated that they actively used the license, zoning, variance and exception compliance was slightly more than half.

TABLE VII

ZONING COMPLIANCE

("ACTIVE" LICENSEES)

	Number of Subjects	Percentage
Zoning compliance	42	51.8
Noncompliance	39	48.2
TOTAL	81	100.0%

Research showed only two instances where licensees had applied for and received variances.

4. Licensee changed address

Of the 136 licensees, 30 (22.1%) had changed their license address. None had notified BATF pursuant to regulation.

TABLE VIII

BATF NOTICE

(CHANGED ADDRESS)

	Number of subjects	Percentage
Notified BATF	0	.0
Failed to notify BATF	30	100.0
TOTAL changed address	30	100.0%

5. Connecticut Sales Tax Permit

Of 81 active dealers the researchers were able to ascertain the state sales tax permit status of 73.

TABLE IX

SALES TAX PERMIT

("ACTIVE" LICENSEES)

	Number of subjects	Percentage
Possessing required permit	59	80.0
Failing to possess required permit	14	20.0
TOTAL in sample	73	100.0%

The inability of state tax officials to determine the permit status of the remaining sample is a strong indication that few of them are in compliance.

6. Summary of major legal violations

Each of the 136 dealers was individually analyzed for compliance with the foregoing legal requirements. Of the total sample (136), only 31 (22.8%) were operating without a direct violation of federal, state or local law.

TABLE X

MAJOR VIOLATIONS PER DEALER

Number of Major Violations	Number of subjects	Percentage
Zero	31	22.8
One	39	28.7
Two	57	41.9
Three	9	6.6
TOTAL	136	100.0%

C. Business Indicia

The purpose of the business indicia was to identify dealers who appeared not to be conducting a bona fide business, and who thus are ineligible for a license under the "intending to conduct business" standard of the statute. The survey revealed, however, that only 81 of the 136 licensees (59.6%) even claimed to be bona fide businesses. As indicated in Table III, the remainder either readily admitted to not being in business (22.1%) or could not be reached after all reasonable attempts (18.3%). Of the 81 self-proclaimed "active" licensees, the business indicia indicate that nearly half are not in fact engaged in a bona fide commercial enterprise using normal business practices.

1. Business hours

Of the 121 licensees who were required by their licenses to maintain particular business hours,[16] 59 licensees (48.7%) could not be reached at all, or were reached outside listed hours. Of the remaining 62 licensees, many could only be reached during normal business hours after numerous efforts. Of the 81 "active" licensees, only 42 (51.8%) could be reached during listed business hours.

2. Licensed premises open to the general public

Of the 81 licensees who claimed to be active dealers, 80 described their customers as follows:

TABLE XI

RESTRICTION OF CLIENTELE

("ACTIVE" LICENSEES)

Announced Clientele	Number	Percentage
General public	6[illegible]	80.0
Distributor only	4	5.0
Police only	4	5.0
Police and friends	2	2.5
Friends only	6	7.5
TOTAL	80[17]	100.0%

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[16] Certain licenses issued to "gunsmiths" and "expert consultants" did not state regular business hours to be maintained.

[17] Data on speargun dealer not included.

The six (7.5%) dealers who sell only to "friends" appear to be conducting business in contravention of 27 C.F.R. § 178.11 (definition of "business premises" requires access "to the public"). Other restrictions of clientele may similarly indicate lack of public access.

Many licensees were surprised to receive calls for business.

> (1) "How did you get my name?"
>
> (2) "Where did you get my name?"

Others freely admitted to a restricted public:

> (3) "I don't sell publicly. I just sell to people I know. How did you get my name?"

Although 64 of the active dealers (79.8%) claimed to serve the general public, almost half of these (31) were operating in residentially zoned buildings (their homes), making the likelihood of access by the "general public" highly doubtful. (See Bonham (Appendix B)). Of all active dealers, 42 (51.9%) did not allow access by the general public either by explicit restrictions of clientele or by effect of improper zoning.

TABLE XII

RESTRICTION OF CLIENTELE

("ACTIVE" LICENSEES)

CROSS-TABULATED TO ZONING

	Number	Percentage
Properly zoned -- "general public"	33	41.3
Properly zoned -- acceptable restriction of clientele (wholesale or police only)	5	6.3
Improperly zoned -- "general public"	31	38.8
Improperly zoned and/or improper restrictions on clientele (friends only)	11	13.6
TOTAL	80[18/]	100.0

3. Source of telephone number

Tables XIII through XV analyze the licensees' use of the telephone listing services provided by the telephone company. Only 8.5% of the so-called businesses appeared in the Yellow Pages.

18/ Data not available for one active licensee.

TABLE XIII

TELEPHONE LISTING

(ALL LICENSEES)

	Number of subjects	Percentage
Yellow Pages ("Guns")	11	8.5
White Pages	83	64.3
Directory Assistance	13	10.1
Could Not Find or Unlisted	22	17.1
TOTAL	129[19]	100.0%

The licensees who claimed to be actively using their licenses did not make much greater use of commercial telephone listings.

TABLE XIV

TELEPHONE LISTING

("ACTIVE" LICENSEES)

	Number of subjects	Percentage
Yellow Pages ("Guns")	11	14.3
White Pages	58	75.3
Directory Assistance	8	10.4
TOTAL	72[20]	100.0%

The most revealing data in this group are found below. These indicate the listing status of licensees who, by their own admission, deal in firearms only on their premises. Only 16.2% were listed in the Yellow Pages under "Guns." (All "active" licensees (Table XIV) might not reasonably be expected to be found in commercial firearms listings because firearms might be only one line of goods in a large retail operation such as a department store.)

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[19] Data not available on 7 licensees.

[20] Data not available on 4 "active" licensees.

TABLE XV

TELEPHONE LISTING

("ACTIVE" LICENSEES HANDLING FIREARMS ONLY)

	Number of subjects	Percentage
Yellow Pages ("Guns")	6	16.2
White Pages	27	73.0
Directory Assistance	4	10.8
TOTAL	37	100.0%

4. Phone responses - residential or business

About half of all licensees did not identify themselves as businesses in answering the telephone.

TABLE XVI

TELEPHONE RESPONSE

(ALL LICENSEES)

	Number of subjects	Percentage
Residential response	50	48.5
Business response	53	51.5
TOTAL	103	100.0%

More revealingly, the self-described "active" licensees also offered predominantly residential telephone responses.

TABLE XVII

TELEPHONE RESPONSE

("ACTIVE" LICENSEES)

	Number of subjects	Percentage
Residential response	39	52.0
Business response	36	48.0
TOTAL	75[21]	100.0%

Further cross-tabulating showed that so-called "active" dealers operating from residentially zoned premises nearly always gave nonbusiness responses.

TABLE XVIII

TELEPHONE RESPONSE

("ACTIVE" LICENSEES IN RESIDENTIAL PREMISES)

Zone areas	Number of subjects	Percentage
Residential response	31	83.8
Business response	6	16.2
TOTAL	37	100.0%

5. Summary of bona fide business indicia

On each indicium related to the conduct of a bona fide business, the failure rate among the 81 licensees who professed to be actively using their licenses was approximately one-half.

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[21] Data not available on 6 "active" licensees.

TABLE XIX

BUSINESS INDICIA SUMMARY

("ACTIVE" LICENSEES)

Indicium	Number "active" dealers failing (out of 81)	Percentage
Regular business hours (Page 32)	31	38.3
Premises open to general public (Table XII)	42	51.9
Business telephone listing (Table XV)	27	33.3
Business telephone response (Table XVII)	39	48.1

The failure rate for each of the four indicia averaged 44.1%, even with the conservative assumption that each licensee for which data were missing had passed. A so-called "active" licensee was regarded as a bona fide business if it passed more than any two of the four criteria. Under this assumption at least 39 of the 81 "active" licensees (48.2%) were not bona fide businesses.

On the basis of the entire sample of 136 licensees, 69.1% were apparently not conducting a bona fide business.

TABLE XX

BONA FIDE BUSINESS

(ALL LICENSEES)

	Number	Percent
Professed to not conducting business	30	22.1%
Not reachable	25	18.3%
"Active" licensees not conducting bona fide business	39	28.7%
TOTAL NON-BONA FIDE BUSINESSES	94	69.1%
"Active" dealers conducting bona fide businesses	42	30.1%
TOTAL BONA FIDE BUSINESSES	42	30.1%
TOTAL	136	100%

VI. CONCLUSION

Based on the New Haven survey it is clear that the 1975 assertions by Assistant Secretary David R. MacDonald ("less than 30 percent [of federal firearms dealers] actually conduct a *bona fide* business") and the 1978 pilot project in Chicago are valid assessments of the situation.

Of 136 subjects, only 22.8% were in compliance with federal firearms statutes, as well as state and local tax and zoning laws. An examination of dealer business practices showed few conducting business in the accepted way. A total of 69.1% of all licensees were not conducting a bona fide business.

FEDERAL LAWSUIT AGAINST BATF

Mr. BEARD. NCBH is presently involved in a Federal lawsuit against BATF since it appears that BATF has exercised virtually no selectivity in issuing Federal dealers' licenses. We believe it is very important that the Secret Service assure the Congress that these regulatory functions will be strictly enforced if this agency becomes the enforcer of the Gun Control Act of 1968.

Although placing firearms law enforcement with the Secret Service is an appealing idea, another proposal which we feel is worthy of consideration is the transfer of responsibilities from the Department of the Treasury—as stipulated in the Gun Control Act of 1968—to the Justice Department. A transfer to the Justice Department rather than the Secret Service would require that the current law be amended.

Nevertheless, this option should not be overlooked. Since there presently appears to be an absence of regulatory/administrative functions within the Justice Department, it may be advisable to devise a plan whereby the regulatory functions required by firearms laws remain in the Treasury Department while the criminal investigatory and prosecutorial functions move to the Federal Bureau of Investigation and the Justice Department. NCBH would be happy to sit down with interested parties to help devise such a plan.

Again, we would like to emphasize our firm belief that the key issue before you and the rest of the Congress is the level of firearms law enforcement. The shape of the badge or the wearer of the badge is no more important than the resources committed to effectively enforce the Gun Control Act of 1968 and other Federal firearms laws. In order for this enforcement to take place, the agency responsible for this function must be sufficiently funded.

Mr. Chairman, the time has come to admit that BATF has outlived its usefulness and has, in effect, been destroyed by a massive, cynical campaign waged by the National Rifle Association. The demise of BATF has apparently happened, but perhaps the burial of BATF is an example of the right thing happening for the wrong reason.

We hope the subcommittee's actions will be in the public interest and will not be compromised in any way by the selfish concerns of a small but well-financed special interest. The time is long overdue that we make the maximum effort to enforce firearm laws and make this a safer, less violent Nation.

Thank you, Mr. Chairman.

Senator ABDNOR. Thank you, Mr. Beard.

I guess you threw a new proposal in with the Justice Department. We thought we were talking about whether to go along with the proposed I guess it is Executive order, Secretarial Order. I don't know if this committee even if it wanted to could put a new place in altogether, like the Justice Department. If some action was taken, it wouldn't come from this committee. I mean, our decision as far as we are concerned will have to be made on whether we think the enforcement should be left in the hands of the BATF or go over to the Secret Service. With those two proposals, you prefer the Secret Service; is that right?

Mr. **Beard**. That is correct, Mr. Chairman. We think that is the proper function in the short term. We were suggesting that the Congress may want to look at, in the long range, a more fullsome exploration of ways to deal with the problem. But in the short range we think the administration's proposal is a very useful one.

Senator **Abdnor**. Thank you. We thank you for your testimony.

The National Skeet Shooting Association, Mr. Davis. Would you care to come forward?

National Skeet Shooting Association

STATEMENT OF CHRISTOPHER L. DAVIS, NATIONAL SKEET SHOOTING ASSOCIATION

ACTIVITIES OF NSSA

Mr. **Davis**. Thank you, Mr. Chairman.

Senator **Abdnor**. Mr. Davis, we welcome you to the committee.

Mr. **Davis**. To help move things along, I am just going to submit the statement and say a few words to highlight what is in the prepared statement.

The scope of the membership of the National Skeet Shooting Association encompasses 15,000 sports persons who enjoy clay target shooting. It sounds small, but on the other hand, it is the one group that probably engages in more tournaments, fire more ammunition per year, travels interstate to more tournaments, and own and use more firearms in that particular sport than any other shooting sport. As such, the group has grown each year, and looking back over the last 20 to 25 years and having checked with the leadership of the association and the membership, aside from occasional horror stories that are long out of date, we see no problem with the present operation of the Bureau of Alcohol, Tobacco and Firearms. We have worked and grown with that Bureau and believe it to operate fairly smoothly in our own interests.

We do have several reservations or, more properly, questions about the current administration proposal. First, we question whether the transfer to the Secret Service within the Department of the Treasury would stretch present Secret Service resources too far.

Second, and of greater concern, we see such a new agency or Secret Service with expanded authority in a troubling position of having to balance two competing interests. First of all, it would have the firearms regulation and enforcement administration mission, coupled with its already present and very important mission of protecting the lives of the President and key national leaders. I predict that a well-balanced and objective competition between those two missions with the one agency could not be adequately maintained.

I would fear that the second mission perhaps might result, for want of a better term, perhaps in scapegoating the adequate administration of firearms controls and the gun owners in this country. I doubt whether that dual mission placed in one agency could be effectively maintained.

There is a second concern, or a third concern, about the administration's proposal. That is the way it is being made, presented and promoted.

The National Skeet Shooting Association needs more information about the administration's goals and intent. It needs to know how would the Secret Service administer the present laws. I believe that using the budget process is not to be the right vehicle for this kind of consideration and review.

Just listening to some of the people that have spoken to you before, we have heard in many cases is it better to leave it where it is or put it in Secret Service. There should be a greater review, looking at more information that has not been forthcoming from the administration, aside from simply the budget process.

In past administrations there have been comprehensive studies that have been submitted to Congress, oftentimes with reorganization proposals following. Well, that is not necessary in this case. It does promote a more full and fair consideration than what we are being treated to under the current administration's proposal.

We would hope with your help to have more information forthcoming from the administration and that a more full consideration could be given to the issue.

I would point to a rather exhaustive study completed by the Office of Management and Budget in 1978 that I cite in the prepared statement, "Federal Law Enforcement, Police and Investigative Activities: A Descriptive Report"—perhaps the most exhaustive and complete analysis ever made of this function in the Federal Government. I would hope you would ask Treasury and OMB officials in time whether they have looked at that study and plan on building on it as they pursue this proposal.

Senator ABDNOR. What year was that?

Mr. DAVIS. 1978.

Senator ABDNOR. Who made it?

Mr. DAVIS. The Office of Management and Budget. The President's reorganization project commenced in June of 1977 and its report was given to the President and to Congress in October of 1978.

Senator ABDNOR. Who called for that study at that time?

Mr. DAVIS. President Carter, in pursuit of the reorganization of the executive branch and the Reorganization Act of 1977.

Those are just some of the highlights that are in the prepared statement, Mr. Chairman.

PREPARED STATEMENT

Senator ABDNOR. Your whole statement will be placed in the record.

[The information follows:]

PREPARED STATEMENT OF CHRISTOPHER L. DAVIS

(Diebold, Millonzi, Raiser & Robshaw)
Counsel to the National Skeet Shooting Association

Mr. Chairman:

On behalf of the National Skeet Shooters Association, an organization with approximately 15,000 active tournament shooting members, I want to thank you for this opportunity to testify before the Treasury, Postal Service and General Government Subcommittee of the Senate Appropriations Committee to discuss some general concerns about the Administration's proposals concerning the Treasury's Bureau of Alcohol, Tobacco and Firearms.

Let me first describe--very briefly--the dimensions of this target shooting group. More than likely there is no other shooting sport that involves the number of competitors who travel to shooting tournaments each year and regularly transport their firearms or the amount of fired ammunition, tournaments and number of firearms than clay target shooting and skeet shooting in particular. With that being the case, those participants in clay target shooting sports have, in fact, a close relationship with government regulations and their administration and enforcement by the Bureau of Alcohol, Tobacco and Firearms and state and local agencies as well.

As a concerned group of shooting sportspersons, we have observed implementation of additional regulations governing interstate shipment of firearms and purchase of ammunition and its reloading components. We have cooperated in the administration of those regulations and I can say that we have no significant complaints. The regulations ~~may~~

be, at times, somewhat cumbersome and seem to some of our members overly meddlesome, but we have learned to live with the present operations of the Bureau of Alcohol, Tobacco and Firearms and find it, from our point of view, to be operating smoothly. Past abuses by individual agents against some gun owners are just that: misguided and long past actions that do not appear to represent current general policy. Better supervision and more precise policy directives by the previous Administration have largely eliminated such abuses.

Now, though, we understand the present Administration proposes to transfer firearms enforcement responsibilities from the Bureau to the Secret Service (within the Treasury Department) and, in the process, abolish the Bureau. The Administration's FY83 budget simply proposes to eliminate funding for the Bureau with only footnoted references to appropriate transfers of authority.

The Reagan Administration has chosen to use the budget process to implement a decision made with what appears to be very little analysis. We are left only to guess what underlying reasons exist for the change and, more importantly, what new policy objectives are to be pursued.

Our Association's members, the general public and the Congress are not being well served by the manner in which this proposal is being promoted. Before our Association can develop a more solid position in response to this proposal, we will need to know much more.

In past Administrations, careful analysis of needs and programs usually led the way to a formal review of government reorganization proposals. Affected parties and Congress could, in that way, review and comment.

Our Association's members view the present Bureau operations as working relatively smoothly and we participate cooperatively in the Bureau's efforts. Now, in the FY83 budget proposal, we are faced with a reorganization that neither addresses reasons for the change nor new policies for the agency on the receiving end, in this case the Secret Service, in order to indicate how it will administer and enforce the laws differently from the current operations of the Bureau.

A familiar country saying "If it ain't broke, don't fix it" seems to apply to this situation. Our members are not sure the Bureau is in need of fixing and we question whether the transfer might, in the long run, prove to be of more concern than that which the Administration currently believes wrong with the Bureau.

Simply stated, assigning firearms regulation and enforcement to the agency already charged to protect the lives of the President and key officials may, in time, result in stretching the Secret Service's resources too far.

We also question the merits of placing firearms enforcement responsibility in an agency already required to protect our nation's leaders from, for the most part, the misuse of firearms. It is of great importance that an agency with such expanded responsibilities be able to balance the competing mission of proper firearms regulation with the mission of providing adequate protection to our key officials during an increasingly violent and terrorist period. Unhappily, we believe an unbiased competition between those two missions cannot and will not be maintained.

I strongly encourage you to seek more information from the Administration to address some of these concerns I have raised this morning. Further, in your discussions with the Treasury Department and the Office of Management and Budget, you might refer to the comprehensive study entitled

Federal Law Enforcement, Police and Investigative Activities: A Descriptive Report completed by OMB in late 1978 and inquire whether either agency attempted to build upon the already exhaustive work. (Reprinted in Hearings before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, 95th Congress, 2nd Session, September 29 and October 2, 1978; part 2.)

During the course of your work in this area, the National Skeet Shooting Association hopes you will be as generous with your time for comment by those of us in the shooting sports as you have been with us today. We would look forward to offering further comment as more information is forthcoming from the Administration.

NSSA RELATIONSHIP WITH BATF

Senator **Abdnor**. We appreciate this. We are trying to do I guess in limited time just what you are saying. We are trying to find out as much information as possible, because we too want to do what is best and what is right.

What is the National Skeet Shooting Association's relationship with the BATF and how do they regulate you or control you?

Mr. **Davis**. Interstate sales of firearms is a concern. The purchase of reloading components, very important to shotgun skeet shooting participants because in a time of inflation, it is important to be able to keep costs down. The purchase of gunpowder is regulated very carefully. It is something that we have to watch.

But again, as I say in the testimony, it has been a regulation and enforcement mission that we have worked with over the last years.

Senator **Abdnor**. Has it worked quite well, though?

Mr. **Davis**. It has worked smoothly. Certainly there have been some problems in it, but nothing we find we have not been able to work out.

Senator **Abdnor**. Have you been able to work with them?

Mr. **Davis**. Yes.

Senator **Abdnor**. And everything has changed?

Mr. **Davis**. Yes.

Senator **Abdnor**. It has been helpful? I mean, they have been rather cooperative, haven't they?

Mr. **Davis**. To some of our members it would be fair to say it appears overly meddlesome and cumbersome, but by and large it has worked smoothly.

I question, as I say in the testimony, whether this is a solution in search of a problem or, as the saying goes in this country, "If it ain't broke, don't fix it."

Senator **Abdnor**. In just a quick study of the proposal, do you think yourself that if you had the option of the two, that the one we are looking at today versus what we have in place, that you would be inclined to think that the BATF would do a better job in the area of your concerns?

Mr. **Davis**. We can live with the present situation. But my members, the general public, and Congress aren't well served by the lack of information the administration has been serving up in the promotion of its proposal. There should be a more full review of this, aside from simply one Bureau or the Secret Service.

Let me say finally I appreciate the opportunity on behalf of the people that actively engage in the shooting sports. It is nice to have this opportunity.

Senator **Abdnor**. We thank you. We are trying to get as much input in a short time as we can. I guess that is why we are holding these hearings and that is why we held up the proposal until we had a chance to at least get some information. So thank you very much.

Mr. **Davis**. Thank you, sir.

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

STATEMENT OF BRUCE SILVERGLADE, DIRECTOR OF LEGAL AFFAIRS, CENTER FOR SCIENCE IN THE PUBLIC INTEREST

ACTIVITIES OF CENTER

Senator ABDNOR. Bruce Silverglade, Center for Science in the Public Interest.

Mr. Silverglade, I guess you heard us say the entire statement would be placed in the record. You may proceed as you wish.

Mr. SILVERGLADE. Thank you.

Good afternoon. I am director of legal affairs at the Center for Science in the Public Interest. The center is a nonprofit consumer information and advocacy organization and has had a longstanding interest in improving national health policies. We are primarily supported by individual donations of our more than 34,000 members who are located nationwide. We accept no funding from either government or industry.

REGULATION OF ALCOHOLIC BEVERAGE LABELING AND ADVERTISING

Since 1972, we have worked to improve regulation of alcoholic beverage labeling and advertising. Therefore, we are greatly concerned about the administration's plans to reduce funding for the enforcement of the Federal Alcohol Administration Act [FAA] and to dismantle the Bureau of Alcohol, Tobacco, and Firearms [BATF].

Today I would first like to outline why continued enforcement of the FAA Act's requirements for truthful and nonmisleading advertising and labeling is essential for maintaining the health and wellbeing of all consumers. I would then like to suggest proposals that we believe meet the administration's budget reduction and reorganization goals while insuring that consumers will receive protection from false, deceptive, and misleading claims.

According to John M. Walker, Assistant Secretary of the Treasury for Enforcement and Operations, the administration's plan would place the brunt of the proposed budget cuts on regulatory programs designed to prohibit false, deceptive, and misleading alcoholic beverage advertising.

EFFECT OF ADVERTISING ON ALCOHOL CONSUMPTION

The importance of strong advertising regulation is emphasized by the findings of a recent study sponsored by BATF itself, as well as the Federal Trade Commission and other agencies. The study, conducted by researchers at Michigan State University, found that advertising increases consumption of alcoholic beverages by at least 10 percent; that advertising prompts excessive drinking and contributes to alcohol problems; and that advertising influences the values and behavior of the public, especially adolescents, toward alcoholic beverage consumption.

In addition, studies by the National Institute on Drug Abuse have demonstrated that advertising impedes programs aimed at preventing alcohol-related problems.

The fact that advertising impedes prevention programs and that BATF own studies have linked advertising with alcohol abuse indicate a need for increased, not decreased, regulation of alcoholic beverage advertising.

LABELING REGULATIONS

Regulation of labeling would not fare much better under the administration's plans for cutting funds for enforcement of the FAA Act. Labeling and advertising regulation go hand in hand. The Treasury Department's statutory mandate for preventing false, deceptive, and misleading practices is the same for both labeling and advertising. Apparently, even the alcoholic beverage industry fears a marketplace bloodbath if the BATF label-approval program is put in the deregulatory guillotine. The losers, if this battle erupts, will be both industry and consumers.

It is pennywise and pound-foolish to reduce funds for the regulation of products that cause tens of thousands of deaths each year and enormous harm to society. We urge the committee to appropriate funding for these essential Government functions.

Yet, the question remains as to which agencies should be responsible for these regulatory programs. The administration has proposed burying responsibility for labeling and advertising regulation in the Customs Service. We submit that assigning responsibility to the Customs Service makes a mockery out of the administration's reorganization plan. The Customs Service has not expertise in this area and responsibility for such activity falls wholly outside its institutional mission.

An alternative option might be to block the administration's reorganization plans and preserve responsibility for advertising and labeling regulation in BATF. We oppose this option, however, because of BATF dismal record of enforcing the FAA Act's consumer protection requirements.

A recent article in the Journal of Public Health Policy, which I have appended to my testimony, convincingly demonstrates BATF disregard for its responsibility to prohibit false, deceptive, and misleading advertising and its unwillingness to act in the public interest.

It is certain that the administration's proposed reshuffling will not result in any improvement in advertising and labeling regulation. The Treasury Department has neither the interest, motivation, nor will to enforce the FAA Act's requirements as Congress intended.

The administration's budget-cutting and reorganization goals can be met, however, by transferring enforcement responsibility to other agencies that have the expertise, institutional dedication, and statutory authority to assume responsibility for the regulation of alcoholic beverage advertising and labeling.

In a speech to the Distilled Spirits Council of the United States, Assistant Secretary Walker himself alluded to these agencies. Now, as Walker stated, BATF currently has three functions—a criminal-enforcement mission directed at violent crime, a revenue-protection mission, and, I quote, "a regulatory mission, very much like those conducted by the Food and Drug Administration and the Federal Trade Commission."

We submit that the most logical and cost-effective solution to the current controversy would be for the full committee to appropriate funds for regulation of alcoholic beverage advertising and labeling by these agencies and to permit the Department to rid itself of responsibility for these matters. It certainly makes little sense to throw money at the Department when it lacks the motivation to wisely spend it as Congress intends.

Both the FTC and the FDA could incorporate advertising and labeling regulations, respectively, into their current programs with little cost and difficulty.

In sum, we urge the subcommittee to appropriate sufficient funds needed for enforcement of advertising and labeling regulations. The sum is small compared to the cost of the harm that will result from leaving consumers unprotected from false, deceptive, and misleading claims.

Yet, the full committee should carefully consider all available options. The choice is not simply to either go along with the administration's plans or block the reorganization and require that BATF spend $16.1 million to enforce the FAA Act. Both budget-cutting and reorganization goals can be met by placing regulation of alcoholic beverage advertising and labeling where it belongs—at the FTC and FDA.

PREPARED STATEMENT

This concludes my prepared remarks. I submit my prepared statement for inclusion in the record at this point.

I would be glad to answer any questions. I would like to thank Mr. Sherman and the full subcommittee and you, Mr. Chairman, for allowing me to present this testimony today.

[The statement follows:]

PREPARED STATEMENT OF BRUCE A. SILVERGLADE

Director of Legal Affairs
Center for Science in the Public Interest
(Footnotes appear at end of statement)

Good afternoon. My name is Bruce Silverglade. I am Director of Legal Affairs at the Center for Science in the Public Interest (CSPI). The Center is a non-profit consumer information and advocacy organization and has had a longstanding interest in improving national health policies. CSPI is primarily supported by individual donations of our more than 34,000 members who are located nationwide. We accept no funding from either government or industry.

Since 1972, we have worked to improve regulation of alcoholic beverage labeling and advertising. Therefore, we are greatly concerned about the Administration's plans to reduce funding for the enforcement of the Federal Alcohol Administration Act (FAA) and to dismantle the Bureau of Alcohol, Tobacco and Firearms (BATF). Today, I would first like to outline why continued enforcement of the FAA Act's requirements for truthful and non-misleading advertising and labeling is essential for maintaining the health and well-being of all consumers. I would then like to suggest proposals that meet the Administration's budget reduction and reorganization goals while ensuring that consumers will receive protection from false, deceptive and misleading advertising and labeling.

According to John M. Walker, assistant Secretary of the Treasury for Enforcement and Operations, the Administration's plan would place the brunt of the proposed budget cuts on regulatory programs designed to prohibit false, deceptive and misleading alcoholic beverage advertising. It is possible that advertising regulation might be eliminated completely.[1] As a threshold matter, it is unclear how the Administration can legally abandon its statutory responsibility to regulate alcoholic beverage advertising unless new legislation amending the FAA Act is enacted.[2] Apparently, the Department's statutory responsibility for enforcing the FAA Act has not deterred the Administration from attempting to sabotage the Department's Congressional mandate through the budget process.

The importance of strong advertising regulation is emphasized by the findings of a recent study sponsored by BATF itself, as well as the Federal Trade Commission and other agencies.[3] The study, conducted by researchers at Michigan State University (for the cost of approximately $100,000) found that

- advertising increases consumption of alcoholic beverages by at least 10%;
- advertising prompts excessive drinking and contributes to alcohol problems;
- advertising influences the cognitions, values and behavior of the public, especially adolescents, towards alcoholic beverage consumption.

In addition, studies by the National Institute on Drug Abuse have demonstrated that advertising impedes programs aimed at preventing alcohol-related problems.[4] Prevention strategies usually rely on either small scale efforts that attempt to alter attitudes and change behavior or large scale public information campaigns. Both types of programs are thwarted by the massive amount of alcoholic beverage advertising that supports the use of alcohol. The fact that advertising impedes prevention programs and that BATF's own studies have linked advertising with alcohol abuse indicate a need for increased, not decreased, regulation of alcoholic beverage advertising.

Regulation of labeling would not fare much better under the Administration's plans for cutting funds for enforcement of the FAA Act. Labeling and advertising regulation go hand in hand. The Treasury Department's statutory mandate for preventing false, deceptive and misleading practices is the same for both labeling and advertising.[5] Apparently, even the alcoholic beverage industry fears a marketplace bloodbath if the BATF label approval program is put in the deregulatory guillotine.[6] The losers, if this battle erupts, will be both industry and consumers.

As in the case of advertising, labeling regulation must be strengthened, not weakened. Several new regulatory initiatives must receive serious consideration if the public health and well-being is to be maintained. Labels should include warning statements informing consumers of alcohol related diseases such as fetal alcohol syndrome and should caution consumers to limit their consumption of alcohol before driving. Caloric content should be disclosed and renewed attention should be devoted to the ingredient labeling regulation that BATF recently rescinded.[7]

Elimination of BATF, coupled with a reduction of funds for enforcement of the FAA Act, means that labeling regulation will fare little better than advertising regulation. It is penny wise and pound foolish to reduce funds for the regulation of products that cause tens of thousands of deaths each year and enormous harm to society. We urge the committee to appropriate funding for these essential government functions.

Yet, the question remains as to which agencies should be responsible for these regulatory programs. The Administration has proposed burying responsibility for labeling and advertising regulation in the Customs Service. The Customs Service collects revenue from imports, administers the Tariff Act of 1930 and certain navigation laws and enforces international trade regulations. We submit that assigning responsibility for labeling and advertising regulation to the Customs Service makes a mockery out of the Administration's reorganization plan. The Customs Service has no expertise in this area and responsibility for such activity falls wholly outside its institutional mission.

An alternative option might be to block the Administration's reorganization plans and preserve responsibility for advertising and labeling regulation in BATF. We oppose this option, however, because of BATF's dismal record of enforcing the FAA Act's consumer protection requirements.

A recent article in the Journal of Public Health Policy (attached as Appendix A) demonstrates BATF's utter disregard for its responsibility to prohibit false, deceptive and misleading advertising and its unwillingness to act in the public interest.[8] BATF has an extremely broad mandate to prevent deception and prohibit, irrespective of falsity, statements related to irrelevant matters that may mislead consumers. Yet, it has allowed the public to be barraged each year by more than $1 billion of advertisements that promise wealth, prestige, athletic achievement, social acceptance and sexual success to those who consume alcoholic beverages.[9]

Unlike the Federal Trade Commission, which is responsible for prohibiting false, misleading and deceptive advertising of other foods and beverages, as well as most other products, BATF has failed to require substantiation of advertising claims. Similarly, BATF has failed to require specific disclosures in advertising that are necessary to dispel misleading claims, although the FTC has done so routinely.[10] BATF has long ignored these powers exercised by the FTC, even though it has a mandate to protect consumers from a product that Congress has found to entail a much greater social risk than most of the products handled by the FTC. As a result of BATF's non-feasance, liquor companies can falsely promise prestige, wealth and success while Wonder Bread cannot falsely claim that its product builds strong bodies 12 ways.[11]

Even with current funding, BATF has devoted few resources to advertising regulation. Only one and one-third work years are budgeted for policing tens of thousands of newspaper and magazine ads. Television and radio advertising for beer and wine is practically ignored. Instead, a blind reliance is placed on compliance with voluntary industry advertising codes. When violations of BATF regulations are uncovered, the agency has acted meekly. Criminal or administrative actions are seldom attempted. Instead, informal compromises are worked out behind the scenes and actions taken in response to BATF allegations are not placed on the public record.[12]

BATF's record for enforcing labeling requirements is equally dismal. For example, after more than 9 years of effort, the agency has failed to develop regulations for ingredient labeling.[13]

The legislative history of the FAA Act plainly indicates that the purpose of the statute's labeling requirement is to make sure consumers are "told what was in the bottle."[14] Yet alcoholic beverages are the only food or beverage products that do not routinely list ingredients on the label. As a result, doctors cannot provide informed treatment for life threatening illnesses caused by the mysterious additives used by manufacturers. The only additive known for certain to have killed consumers was cobalt sulfate. Until 1966, this additive was used in beer as a foam enhancer. Doctors treating the patients suffering from the effects of the additive said they could have saved some lives if they had known cobalt sulfate was in the beer.[15] In addition, more than one and one-half million Americans are not able to avoid consuming brands that contain ingredients to which they are seriously allergic. Furthermore, the absence of ingredient labeling keeps consumers in the dark as to the quality of the ingredients used in competing brands.[16]

It is certain that the Administration's proposed reshuffling will not result in any improvement in advertising and labeling regulation. The Treasury Department has neither the interest, motivation, or will to enforce the FAA Act's requirements as Congress intended.

The Administration's budget cutting and reorganization goals can be met, however, by transferring enforcement responsibility to other agencies that have the expertise, institutional dedication and statutory authority to assume responsibility for the regulation of alcoholic beverage advertising and labeling. In a speech to the Distilled Spirits Council of the U.S., Assistant Secretary Walker himself alluded to these agencies.[17] As Walker stated, BATF currently has 3 functions, a criminal enforcement mission directed at violent crime, a revenue protection mission, and

> "a regulatory mission, very much like those conducted by the Food and Drug Administration and the Federal Trade Commission."[18]

We submit that the most logical and cost effective solution to the current controversy would be for the full committee to appropriate funds for regulation of alcoholic beverage advertising and labeling by these agencies and to permit the Department to rid itself of responsibility for these matters. It certainly makes little sense to throw money at the Department when it lacks the motivation to wisely spend it as Congress intends.

Both the FTC and the FDA could incorporate advertising and labeling regulations, respectively, into their current programs with little cost and difficulty. In fact, both agencies have eagerly asserted jurisdiction over such matters in the past. The FTC has scrutinized alcoholic beverage advertising for decades and, on occasion, has taken action to ban deceptive claims.[19] In fact, BATF has requested FTC assistance when manufacturers have refused to heed BATF warnings.[20] In 1978, FTC took the lead in the controversy surrounding comparative advertising and urged BATF to alter its restrictions on such ads.[21]

Similarly, the FDA attempted to exercise jurisdiction over alcoholic beverage ingredient labeling in 1975.[22] The FDA action was placed in limbo when the Justice Department refused to allow the agency to appeal a district court decision challenging its authority to act.[23] The Justice Department's decision was predicated on assurances by BATF that it would issue its own ingredient labeling regulation.[24] BATF ultimately failed to abide by its agreement and the matter remains in limbo, although FDA authority likely exists.

In sum, we urge the Subcommittee to appropriate sufficient funds needed for enforcement of advertising and labeling regulations. The sum is small, compared to the cost of the harm that will result from leaving consumers unprotected from false, deceptive and misleading claims. Yet, the full Committee should carefully consider all available options. The choice is not simply to either go along with the Administration's plans or block the reorganization and require that BATF spend $16.1 million to enforce the FAA Act. Both budget cutting and reorganization goals can be met by placing regulation of alcoholic beverage advertising and labeling where it belongs--at the FTC and FDA.

This concludes my prepared remarks. I would like to thank the Subcommittee for this opportunity and would be glad to answer any questions.

FOOTNOTES

[1] John M. Walker, Assistant Secretary for Enforcement and Operations, stated at a February 11, 1982 media briefing that regulation of alcoholic beverage advertising would be "reduced or eliminated" under the Treasury Department's plan to "disestablish" BATF. Food Chemical News, February 15, 1982, p. 53.

[2] Section 205(f) of the FAA Act, 27 U.S.C. §201 et seq. places responsibility on the Secretary of the Treasury to regulate alcoholic beverage advertising.

[3] C. Atkin and M. Block, "Content and Effect of Alcoholic Beverage Advertising," report submitted to the Bureau of Alcohol, Tobacco and Firearms, Federal Trade Commission, National Institute on Alcohol Abuse and Alcoholism, and Department of Transportation, 1981.

[4] Lawrence M. Wallack, "Mass Media Campaigns: The Odds against Finding Behavior Change," forthcoming as a chapter in a National Institute on Drug Abuse monograph on prevention. The prepublication copy of the paper is dated October 1980; also see note 8, infra.

[5] Section 205(e) assigns responsibility to the Secretary of the Treasury for the regulation of alcoholic beverage labeling.

[6] Richard L. Gordon, "Blood Bath Feared in BATF Dies," Advertising Age, November 23, 1981, p. 1.

[7] See 46 Fed. Reg. 55093

[8] James F. Mosher and Lawrence M. Wallack, "Government Regulation of Alcohol Advertising: Protecting Industry Profits versus Promoting the Public Health," Journal of Public Health Policy, December 1981, pp. 333-353.

[9] Ibid., pp. 340-341.

[10] The FTC has issued regulations for providing tar and nicotine disclosure in cigarette ads, has required corrective advertising messages for cosmetics and required health warnings to be placed in over-the-counter drug advertisements.

[11] Mosher and Wallack, pp. 336-337.

[12] Telephone conversation with Mr. Al Graham, Chief, Consumer and Trade Division, Bureau of Alcohol, Tobacco and Firearms, February 1982.

[13] Supra, note 7

[14] Legislative history of the Federal Alcohol Administration Act (Public Law No. 401, Seventy-Fourth Congress), September 15, 1935, p. 66.

[15] "Quebec Beer-Drinkers' Cardiomyopathy", Vol. 97, Canadian Medical Association Journal, October 7, 1967, p. 928.

[16] See 45 Fed. Reg., 40538-40543.

[17] John M. Walker, Jr., Assistant Secretary for Enforcement and Operations, U.S. Treasury Department, Address before the 9th Annual Conferences of the Distilled Spirits Council of the United States, Inc., Phoenix, Arizona, January 27, 1982.

[18] Ibid, p. 6.

[19] Mary Hancock, "Federal Jurisdictional Disputes in the Labeling and Advertising of Malt Beverages," Food, Drug and Cosmetics Law Journal, June, 1979, p. 283.

[20] Ibid., p. 282.

[21] Ibid., pp. 284-285.

[22] See 40 Fed. Reg., 544555, November 24, 1975.

[23] See Brown-Foreman Distillers Corp. v. Mathews, 435 F. Supp. 5 (W.D. Ky., 1976).

[24] Richard A. Merrill and Peter B. Hutt, Food and Drug Law--Cases and Materials, Foundation Press, 1980, pp. 163-164.

APPENDIX A

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Government Regulation of Alcohol Advertising: Protecting Industry Profits versus Promoting the Public Health

JAMES F. MOSHER and LAWRENCE M. WALLACK

PREFACE

ON November 21, 1978, the Bureau of Alcohol, Tobacco, and Firearms (ATF) published in the *Federal Register* an "Advance Notice of Proposed Rulemaking concerning Alcohol Advertising Regulations" (1). The notice stated that revisions to ATF regulations were necessary because of the major changes in advertising techniques which have occurred since the rules were established over forty years ago. Several questions were raised, including ATF's general approach to alcohol advertising, and the public and industry were invited to submit comments.

After reviewing ATF's notice, we decided to submit a comment challenging ATF's general approach and advocating that it take seriously its responsibility under the Federal Alcohol Administration Act (FAAA) to protect the public from misleading and potentially misleading alcohol advertising (2). We provided an analysis of the FAAA mandate and the public health issues which it raised and gave both general and detailed recommendations for ATF action. A revised version of our comments was published in the Spring 1979 issue of *Contemporary Drug Problems* (pp. 87–107).

ATF received over 9,000 other responses to its notice, mostly from consumers who voiced serious objections to the pervasiveness and misleading nature of current alcohol advertising practices. Television advertisements and messages directed at the young were objected to most often. Fewer than ninety responses were received from industry representatives

On December 12, 1980, over two years after its original notice, ATF finally made public its proposed regulatory reforms and again requested public and industry comment (3). Although publicized as a move toward deregulation, the new rules in fact added at least as many new provisions as they deleted. The new rules, however, ignored all of the public response, focusing instead on issues raised by competing industry spokespeople. The following article is the comment we submitted to ATF concerning its proposed "reforms."

The current Administration has proposed eliminating ATF as an independent entity. The issues raised here remain relevant, however, as the FAAA will be administered by a new or different governmental body.

INTRODUCTION

The prevention of alcohol-related problems has become a major public health priority in the United States. The regulation of alcoholic beverage advertising, for which ATF has authority and responsibility, is a very important component in any comprehensive policy to reduce the serious personal and societal consequences that are so commonly associated with alcohol. ATF, through its response to solicited public comments and proposed advertising regulations, has shown a disregard for its public health responsibilities and an unwillingness to act in the public interest. ATF not only disregards the public interest and its own Congressional mandate, but shows no awareness of the Surgeon General's conclusion that alcohol is a major public health problem today (4). Instead it permits the industry to continue unabated massive advertising campaigns which falsely portray alcohol as a uniformly positive adjunct to a socially and sexually fulfilling, as well as an economically satisfying, lifestyle. ATF's conduct is disturbing and cause for concern.

ATF REFUSES TO ADDRESS THE PUBLIC'S RESPONSE TO THE REQUEST FOR COMMENTS

The ATF proposed action, by its own admission, ignores over 99% of the comments it received to its original notice (5). A total of 9,046 separate comments were received to that notice, mostly from private citizens. This response itself is noteworthy, since ATF made little effort to publicize its intention to modify current rules. Over 99% of those responding *favored significant curbs* on alcohol advertising, particularly on television and when directed at the young. This overwhelming negative response to alcohol advertising was a surprise to ATF; as one agency spokesperson stated (6), the agency expected a public outcry for deregulation. The public clamor, however, is not surprising to those who have attempted to measure the public's attitudes toward alcohol advertising; recent surveys suggest that a majority of American citizens believe that there is too much advertising of alcoholic beverages and that such ads are signifiicantly misleading (7).

ATF, despite this public mandate for responsible government action, simply dismisses over 99% of the responses with the following statement: "Generally these respondents favored a total ban of all alcoholic beverage advertisements. Since this would require legislative action, it is outside the scope of the advance notice. Other respondents favored stricter controls on advertisements carried on electronic media" (8). This indicates a contradiction in ATF's rationale for eliminating comments from consideration. Not only has it dismissed those comments advocating a total ban but it also disqualifies without any stated reason comments suggesting increased controls on electronic media, an issue on which ATF *requested* comments.

ATF's characterization of the comments is itself misleading. A personal examination found a very different picture (9). For example, the Prevent Alcohol Problems Association, Inc. (PAPA), in Greenville, South Carolina, collected a thousand or more signatures calling for truthful labeling and proper warnings in all alcohol advertisements. Other petitions singled out alcohol advertising on television as a significant social problem, particularly given the youthfulness of television audiences. ATF chose to ignore these recommendations. Thus, public comments did *not* "generally . . . favor a total ban on alcoholic beverage advertisements." Rather they sought reasonable and responsible methods to restrict current industry advertising practices which are both ubiquitous and misleading.

Quite apart from ATF's incorrect characterization of the public response, its conclusion to ignore this strong indication of public sentiment is also disturbing. The original call for comments stated: "ATF has decided to invite early participation in the rulemaking process by industry members and the public. This participation will assist ATF in developing advertising regulations which do not unfairly restrict industry, yet provide suitable protection to the consumer against possible false and misleading advertising. While specific questions are raised in this Notice, the goal of ATF . . . is, consistent with statutory requirements, to focus its attention on false and/or misleading advertising and eliminating detailed regulatory requirements to the extent possible. Any comments on this general approach are, of course, welcome" (10). With this general statement as a guideline, ATF specifically requested comments on the following question: "are there . . . current advertising practices which should be covered in new regulations as to their allowance or prohibition?" (11)

All of the public comments received by ATF are therefore clearly relevant to the original request by the agency. Those comments specifically petitioned for restrictions on television advertising and misleading appeals to the young. They also requested regulations which would require accurate health information to be included in lifestyle advertising. Many comments implicitly argued that all current alcohol advertising is misleading. ATF refuses to address these crucial issues. Although ATF cannot ban advertising outright, it can provide far stricter regulations than those now proposed to insure that advertisements are accurate and not misleading. A proper response to the public's concern, then, is for ATF to conduct its statutory mandate vigorously and conscientiously. ATF's action demonstrates its true orientation—as a mediator of competing industry interests rather than an agency with statutory responsibility to protect the public's health (12).

ATF'S STATUTORY MANDATE UNDER THE FAAA AND THE CONSTITUTION

We do not wish to repeat in full the discussion in our previous comment concerning ATF's authority under the FAAA (13). Briefly, ATF has full authority to restrict or even ban advertising which is misleading or has the potential for being misleading. Proof of actual falsehoods need not be shown before restrictions are applicable. The FAAA's statutory language is very specific: "All alcohol advertisements must be in conformity with ATF regulations as will prevent deception . . . and as will prohibit, irrespective of falsity, . . . statements relating to . . . irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer" (14). The FTC, under a similar but less specific mandate, requires substantiation of advertising claims for other consumer products and specific disclaimers when necessary to dispel potentially misleading advertisements (15). ATF continues to ignore these powers in its regulation of alcohol beverage advertising, a product which Congress has found to have a far greater potential for social harm than most products handled by the FTC. Congressional concern is hardly unwarranted; its concern is fully supported by scientific research. As a result of ATF's inaction, advertisements for distilled spirits can falsely claim that consuming alcohol will bring wealth, prestige, and social success while Wonder Bread cannot falsely claim that its product builds strong bodies in seven or eleven or eighteen ways. Such a result was clearly not intended by Congress.

United States Supreme Court cases since our original comment fully recognize the federal interest in controlling misleading lifestyle alcohol advertising. The Court has given extensive constitutional protection to certain forms of commercial speech because of its "informational function" for society and the public. This protection does not, however, extend to "irrelevant" commercial speech which is misleading or potentially misleading. Such messages are not "informational" and therefore serve no justifiable societal function. As the Court stated recently: "There can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it" (16).

Instead of banning potentially misleading and noninformational commercial speech, the government may promulgate regulations to insure that advertisements will be accurate and not deceptive (17). Content regulation, prohibited in other areas of First Amendment law, is specifically permitted for two reasons: "First, commercial speakers have extensive knowledge of both the market and their products. Thus, they are well-situated to evaluate the accuracy of their messages and the lawfulness of the underlying activity. . . . In addition, commercial speech, the offspring of economic self-interest, is a hardy breed of expression that is not 'particularly susceptible to being crushed by overbroad regulation' " (18). The government need not show actual deception before regulation of purely commercial speech is permissible, only the potential for deception (19). If the potential for deception is greater than the potential for providing accurate information, then there is no constitutional protection (20).

Product "puffery" and lifestyle claims, extremely common methods of promoting alcohol use, are therefore clearly *not* constitutionally protected under U.S. Supreme Court doctrine. Such advertising practices are by definition both inaccurate and unverifiable; when associated with alcohol they are also highly deceptive and noninformative. The Court has explicitly recognized the government's interest in regulating or banning such claims, regardless of actual falsehoods. Constitutional considerations are relevant only if the advertising claims are shown to be accurate and informative (e.g., price, content, and processing-methods information). Modern advertising practices, which tend to deemphasize such "informational" strategies, particularly as to alcoholic beverages, are usually conceded to be "puffed up" and inaccurate, even by the industry (21).

ATF therefore has numerous constitutionally recognized policy options (already used by the FTC regarding advertising of many other products) to fulfill its statutory duty of prohibiting potentially misleading and "irrelevant" alcohol-related lifestyle and "puffery" advertising. These include outright bans and requirements for substantiation of claims and informational labeling.

A recent Federal District Court case fully illustrates ATF's misdirection in this area (22). Taylor Wine Company recently petitioned ATF to approve a label for a new wine termed "light" which included information on calorie content. ATF denied the request as potentially misleading, but based the denial on a very different theory from the one discussed here.

ATF noted that the term "light" is currently used by numerous winemakers for their products but never in conjunction with calorie content. "Light," it claimed, connoted a "regular calorie" beverage, so for Taylor to disclose calorie content would result in a de facto change in the definition of "light," which would in turn make all other "light" labels misleading. ATF stated that it wanted to delay any change in definition until after its review of current advertising and labeling practices was complete.

Taylor took ATF to Court arguing that its request conformed to the FAAA and that it was unconstitutional for ATF to prohibit Taylor from providing accurate consumer information in the form of calorie content. The Court agreed and ordered ATF to certify the label. ATF chose not to appeal.

The case illustrates two points. First, ATF is again caught in an industry battle, attempting to keep Taylor Wines in line with common industry practice. The controversy over comparative advertising claims, discussed below, was also initiated by Taylor Wines and has a similar background.

Second, ATF is focusing on the wrong issues. Its position in this case was one of denying the informative aspect of the labels (caloric content) in favor of promoting a "puffery" type claim ("light" without any defined meaning). Not surprisingly, ATF's stand in favor of inaccurate messages over accurate information ran counter to the FAAA and to constitutional principles.

ALCOHOL ADVERTISING AND THE PREVENTION OF ALCOHOL PROBLEMS

The prevention of alcohol-related problems is a broad enterprise that needs to encompass a varied range of strategies. The usual focus of prevention programs since repeal has been the individual drinker with no attention being paid to the producers, marketers, or distributors of alcoholic beverages (23). This has resulted in a narrow range of prevention strategies, which usually rely on small-scale (school or community) efforts that attempt to alter attitudes and thereby change behavior. Large-scale public information efforts have also been employed seeking the same goals. Both types of programs, no matter how well planned and implemented, are unlikely to succeed because they exist in an environment that is rich with messages that support and encourage the use and misuse of alcohol. The major contributor to this anti-education environment is clearly alcoholic beverage advertising. The massive amount of misleading information being disseminated through alcoholic beverage advertising acts as a barrier to the success of community-based programs and larger public-information programs (24).

An effective prevention policy does not simply look at one small segment of the problem but seeks to comprehend the issues as they exist in a broader system. As we have noted, current policy seriously overemphasizes the responsibility of the individual drinker and ignores the industry that produces alcohol and the government which regulates its production, marketing, and distribution. A comprehensive policy should include attention to all of these segments and insure that a consistent ethical responsibility to the consumer is carried out.

Even if we do accept the emphasis of current prevention strategies to persuade the individual to drink moderately, then it follows that the government must, at a minimum, insure accurate consumer information. Currently this function is executed in two ways. First, the National Institute on Alcohol Abuse and Alcoholism, Division of Prevention, funds demonstration programs, a national public-information campaign, and the National Clearinghouse for Alcohol Information. Second, ATF has the authority and responsibility to regulate alcoholic beverage advertising. Even though these two agencies presumably serve the interest of the same public, their orientations are almost totally opposed.

The NIAAA allocates roughly $11.4 million to provide accurate information to the general population (25). If we make an extremely liberal assumption and further estimate that each state spends approximately $1 million on prevention-related activities for the same purpose, the total still amounts to only one-half of the advertising budget of Anheuser Busch or Miller brewing companies and only a bare pittance compared to the $1 billion or more spent on alcoholic beverage advertising this year (26). This differential in spending is particularly disturbing because alcohol advertising functions as an *anti-education* force. As Katzper and his colleagues have pointed out, the alcoholic beverage industry is quite willing to educate the public about the good life associated with alcohol but not about the potential negative consequences (27).

Their point is aptly illustrated in a content analysis of alcohol advertisements in national magazines by Breed and De Foe. They found that: wealth, prestige, and success were "indirect promises" made in 28% of such ads; social approval or acceptance as a consequence of alcohol use was found in 23% of the ads; relaxation-leisure themes were found in 22% of the ads; and hedonistic pleasure was an "indirect promise" found in 22% of the advertisements studied. In general, the researchers found "little logical relationship between the product and the advertised message." Content relevant to public health concerns such as cautions regarding the negative effects of excessive drinking were "seldom mentioned." Breed and Defoe conclude that alcohol advertisements are "basically unrealistic and rest heavily on fantasy" (28).

De Foe and Breed, in a separate study, analyzed the content of alcoholic beverage advertisements in a national sample of college newspapers. Such ads are an important source of revenue for these publications; two-thirds of all advertising is for alcoholic beverages. They found that the ads suggested an escapist lifestyle ridiculing the values associated with educational achievement and "lionizing the drop-out beer drinker as a hero." Many local ads explicitly encouraged heavy drinking with such special promotions as "Drink 'n' Drown." The researchers conclude that overall the ads promote escape from study and academic work through alcohol (29). No attention at all is given to moderation. We note that, in many states, the primary audience for the advertisements are those under the legal drinking age.

The importance of fair and effective regulation is emphasized by the findings of a recent study sponsored by ATF, the Federal Trade Commission, the National Institute on Alcohol Abuse and Alcoholism, and the Department of Transportation. The study was conducted by researchers from the Departments of Communication and Advertising at Michigan State University. The project included seven separate research studies to examine the content and effects of alcoholic beverage advertising. The studies are not definitive nor are they without methodological problems. They are, like all studies, open to interpretation and criticism. It is important research, however, in that one of the sponsors was ATF and it was anticipated that the findings would inform rulemaking and policy decisions. Some of the major conclusions were:

- There is ample opportunity for alcohol advertising to influence the cognitions, values, and behaviors of the public, especially of young people (30).
- Young people in the sample appear to learn more from ads than do older people, and retrospective reports indicate considerable impact during the initial phases of experimenting with alcohol during adolescence. Thus, advertising seems to serve as a significant informal source of socialization about the subject of alcohol (31).
- The evidence from the field survey indicates that advertising has an influence on drinking behavior during the adolescent years (32).
- There is little doubt that alcohol advertising exerts an influence on frequency and quantity of adult alcohol consumption. The evidence based on both correlational and self-report methodologies shows that the advertising is effective in stimulating consumption (33).
- Exposure to alcohol advertising is clearly related to measures of excessive drinking behavior, but tests with specimen ads do not produce indications of immediate impact on excessive drinking attitudes. There is also a positive association between exposure and problem drinking. To some extent, these relationships may be due to reverse causation; nevertheless, it is likely that some impact is traceable to advertising (34).

The Michigan State study is of interest because it differs from findings of many past studies that indicated little or no effect from millions of dollars of product advertising (35). The study, however, is not crucial to the issue of whether ATF is executing its legal and ethical responsibility to the public. As we noted in our previous comment to ATF: "The point is *not* the relation between alcohol advertising and negative consequences but the lack of a relationship between the consumption of alcohol and personal, social or sexual success" (36).

The responsibility to regulate fairly the massive amount of advertising produced by the alcoholic beverage industry is a potent instrument for insuring the transmission of accurate alcohol information to the consumer *and* facilitating the success of other programmed prevention efforts. We had hoped that ATF's intention to develop new regulations and their funding of an academic investigation on the effects of alcoholic beverage advertising were signs that the agency was going to accept the spirit and letter of their legal mandate. The importance of well-developed, reasoned advertising regulations is an essential part of an overall prevention policy that is commensurate with the enormous task of reducing alcohol problems in society. It must be a set of regulations, however, that is designed to serve the interests of the consumer and the public health, and not one to help the corporate interests iron out intra-industry squabbles that have evolved as competition has intensified.

Advertising currently serves as one of several major barriers to the successful prevention of alcohol-related problems. It is one of the barriers that can be addressed by simply getting ATF to comply with their statutory responsibility.

GENERAL RECOMMENDATIONS

As our comments suggest, ATF must make major reforms in its advertising-regulation policies to fulfill properly its statutory and public health responsibilities. The regulations should reflect the serious health problem that alcohol poses both at the individual and aggregate levels. ATF should, as part of this reform, work in concert with other agencies concerned with the prevention of alcohol-related problems to insure that maximum benefits result from new regulatory policies.

Reforms can take either of two possible approaches. First, ATF could determine that all alcohol advertising that is inaccurate and noninformative is not permitted under the FAAA because of its misleading character. Lifestyle advertising and "puffery" claims, associated with virtually every alcohol advertisement today, would therefore be banned.

This first option has two important advantages. First, it insures that consumers will have a sound basis for making meaningful choices between products, thus insuring industry competition based on product quality and attributes rather than on misleading lifestyle claims. Second, it minimizes government discretion in determining the appropriateness of particular lifestyle claims and the health information required to make a claim accurate and not deceptive.

A second option available to ATF is to require accurate health information for all lifestyle and "puffery" alcohol advertisements. This approach has the advantage of informing and educating the public concerning the dangers associated with alcohol while minimizing government intrusion into advertising techniques.

There are, however, several difficulties. Providing accurate health information requires study in many areas—e.g., sports and alcohol; youth and alcohol; alcohol and sex, wealth, and prestige. For such a campaign to be successful, the messages must be brief, prominent, relevant to the advertisement and easy to understand. ATF has historically been reluctant to conduct such a campaign and probably lacks the competence to do so. A possible technique for avoiding these problems, at least regarding television advertising, would be to require free equal time to health professionals to discuss alcohol-related problems (37).

These proposals, unlike ATF's proposed regulations, respond to the substantial public sentiment received by ATF to limit lifestyle alcohol advertising. An equally important agenda for ATF is to develop a coherent alcohol-prevention regulatory policy in conjunction with other federal and state agencies. Providing limitations on alcohol advertising will accomplish little unless combined with other governmental actions directed at reducing the incidence of alcohol-related problems. Serious study must be given to alcohol tax policies, including tax deductions for alcohol advertising. The dramatic expansion of alcohol availability must be addressed. Investigation and strict enforcement of unfair competition practices as well as other questionable marketing tactics among manufacturers and distributors are also needed (38). All of these agendas either fall within ATF statutory jurisdiction or are substantially connected to it. In short, ATF must begin to develop an overall policy to reduce and prevent alcohol-related problems in our society, the original intent of Congress in passing the FAAA. The strict and impartial regulation of alcohol advertising is but one piece of this responsibility (39).

SPECIFIC COMMENTS ON ATF'S PROPOSED REGULATIONS (40)

ATF's specific proposals completely fail to address the prevention policy issues implicit in ATF's mandate under the FAAA. We provide specific comments for four reasons: (1) the proposed regulations serve to illustrate how our general recommendations would be applied in specific cases; (2) they demonstrate ATF's primary concern in balancing competing industry interests; (3) they provide convincing evidence that government "deregulation" rhetoric often translates into abolishing or limiting public-interest regulation while at the same time maintaining or developing extensive regulation to benefit industry interests; and (4) they illustrate ATF's refusal to address public health issues despite an overwhelming public response to do so. Our comments should not be interpreted as a tacit agreement with ATF that it is addressing the key issues regarding alcohol advertising regulation.

1. *Curative and Therapeutic Claims*

ATF's current practices concerning the words "relax," "relaxing," "thirst-quenching," and other claims of beneficial psychological and physical effects of alcohol consumption are in obvious need of reform. ATF's new proposal, however, takes a significant step in the wrong direction.

Currently, such claims are permitted if there is no direct association between the product and the positive effect, e.g., "relax *and* have a beer." Phrases such as "relax *with* a beer" or "have a beer; it will relax you" are prohibited because they directly suggest a curative or therapeutic effect. ATF proposes to retract this policy in favor of one which, in practice, will permit the industry to associate freely its products with positive psychological and physical effects. Only the most outrageous claims will be prohibited on a case-by-case basis. ATF justifies this change of policy by stating: "Inherent in advertising is the practice of presenting the product in a positive light and we believe now to ban them would be arbitrary and ineffective."

This is a remarkable statement and provides convincing evidence of ATF's failure to perform its statutorily mandated duties. Portraying alcohol as having uniformly beneficial psychological or physical effects is both deceptive and misleading. Alcohol poses serious and well-documented dangers to society, dangers considered by the Surgeon General to constitute a major public health problem. A policy which permits "the advertising practice of presenting [alcohol] in a positive light" therefore violates the FAAA. Positive claims of alcohol's effects, which are unprovable and often demonstratably false, and which ignore the public health dangers that alcohol presents, should either be prohibited or contain full disclosure of relevant health information. The ATF should abandon its narrow definitions of "therapeutic" and "curative" effects, and address such claims in light of its duty to restrict potentially misleading and noninformative advertising.

Applying these principles to advertisements which claim that alcohol has "relaxing" and "thirst-quenching" effects, serious reform is necessary in a manner directly opposed to ATF's proposal. Alcohol, in fact, may dehydrate the body; to say it is thirst-quenching is therefore false. Using alcohol to relax creates serious safety and health dangers, particularly when relied upon habitually. To advocate such usage without adequate health information is clearly misleading and should be prohibited.

2. *Associating Alcohol with Athletes and Athletics*

ATF's policy toward alcohol advertisements which associate alcohol and athletes, athletic events, or particular sports is also misdirected. Currently, ATF prohibits active professional athletes from appearing in advertisements; retired professional athletes, amateurs, and actors posing as athletes, however, are exempt from this regulation. ATF also prohibits advertising which shows athletes consuming alcoholic beverages prior to or during athletic events. Portrayals of drinking *after* actually playing a sport, on the other hand, may be shown. ATF proposes to continue this policy without change.

Again, ATF has produced unnecessary bureaucratic regulations, creating artificial distinctions that avoid the central issue. Advertisers, while obeying the letter of the regulations, flout their intent. Advertising repeatedly uses recently retired athletes who are clearly associated as sports heroes in the minds of the public, particularly the young. Although consumption is never actually shown until after the sporting event is over, its presence is usually very obvious during the entire episode.

Alcohol presents a significant risk to an athlete's ability and safety and should never be positively associated with sporting activity without adequate health and safety information. If the information is not included, the association should be prohibited as irrelevant, misleading material. Skiing-related advertisements are illustrative. A recent beer magazine advertisement shows a female downhill skier riding up a chairlift with a six-pack of beer on the adjoining seat. Drinking and skiing are dangerous companions. Skiing is a potentially hazardous activity, and a dampening of motor responses may result in serious injury or even death. To suggest or imply that alcohol enhances sports ability or enjoyment, given the risks involved, is clearly deceptive and shows a blatant disrespect for the public interest. The association is clear whether or not the skier is actually shown drinking the beer she has with her on the chairlift.

3. New Definitions of the Terms "Light," "Natural," and "Pure"

Much of ATF's attention in its proposals is addressed to providing adequate definitions of "light," "natural," and "pure." ATF proposes the following regulations: (1) require that calorie content be given when a product is characterized as "light"; (2) permit a wine or beer to be termed "natural" if only "essential processing" has been used and if it contains only essential ingredients plus "incidental" additives which are "natural" products added to adjust "natural deficiencies"; and (3) lift all restrictions on the use of the term "pure."

ATF has been preoccupied with these specific terms even though there was no evidence of public concern related to this issue. Based on ATF's attention to these matters we would expect that consumers were distraught by their confusion about what was truly a "light," "natural," or "pure" beer. In fact, the use of the terms "natural" and "light" was not even mentioned in ATF's original proposal, and complaints about them were received from only a small number of industry respondents. None of the public comments addressed the use of these terms. Certain industry spokespeople objected to practices by competitors who have been invading the "light" and "natural" territory with alternative products (41). ATF's action, then, is a classic case of mediating competing industry advertising practices. Ironically, ATF justifies its action as designed to "prevent consumer deception," an odd rationale since no representative of consumers even complained of current practices.

The "preventing consumer deception" rationale is ironic for a second reason. ATF's proposed rules will continue the deceptive practices in the following manner:

A. While providing calorie content when a product is termed "light" is a commendable step, it is not enough to prevent deception (42). A manufacturer can continue to claim that a fattening product, one significantly higher in calories than competing products, has dietary attributes. All it need do is provide caloric information in small print. A more strict regulation on the term "light" is therefore needed, one that includes a requirement that when dietary claims are made, accurate information on alcohol's negative dietary effects is included.

B. ATF will, under its "natural" rule, permit a product to be termed "natural" even when it is laced with additives which are included to make up for the failure of the basic ingredients. Deception will become institutionalized. At a minimum, ATF must require that any product called "natural" list its ingredients on its labels and advertisements so that consumers can determine what the claim means. This is accepted practice for virtually all other foods and beverages. Further, a product simply cannot be natural when it contains any additives, and ATF should not permit such an obvious loophole. ATF did propose that ingredient information be given to consumers as of 1983, but only when requested from the manufacturer; even this minimal proposal was later rescinded (43). Ingredient labeling was rejected because of the supposed expense. We note that our proposal will not add any necessary expense to the product. The manufacturer will be required to list ingredients *only* if it decides to claim that the product is "natural." Thus the expense will be a voluntary part of the marketing decision.

C. ATF is inviting misleading advertising by lifting all restrictions from the use of the term "pure." Most alcoholic beverage products contain additives—in many cases chemicals that pose a serious threat to the public health (44). Consumers have no avenue for discovering whether particular products have any such chemicals. The term "pure" connotes a beverage that has no artificial chemicals or other additives. We propose that ATF act to prevent deception by providing the following regulation: whenever the term "pure" is used to describe an alcohol product, the manufacturer (a) be required to list all ingredients so that the consumer can determine the meaning of the term, and (b) be prohibited from using any chemical additives in the product so advertised. As with our proposal for "natural," the decision to take any added expense to meet this requirement would rest entirely on the marketing department of the manufacturer.

4. Comparative Advertising

As with the "natural," etc., controversy, ATF's concern with comparative advertising is entirely an industry affair. Few if any consumers raised comparative advertising as a problem, and we believe that it does not raise a significant public health issue of itself. Industry response to the original ATF request for comments, however, demonstrates that it is a significant industry concern (45). Recent advertising campaigns by Taylor wine and Schlitz beer show the potential uses of such advertising techniques. We believe that only minimal requirements are needed in this area provided that ATF takes vigorous action to curb deception and potentially misleading claims generally.

5. ATF's Failure to Address Television Advertising

In its original request for comments, ATF stated: "There is a need to take a new look at advertising practices due to the evolution and refinement of advertising techniques over the past 40 years." The most important aspect of this evolution is the introduction of television. Its importance is reflected by the continuing trade ban on distilled-spirits advertising on television, an industry move to avoid direct action by Congress in the 1950s (46). The most common complaint received by ATF concerned the number of beer and wine advertisements on television. Moreover, there are indications that certain distilled-spirits manufacturers and advertisers are considering lifting their self-imposed ban (47).

These factors would suggest that ATF's major emphasis in its proposed regulations should concern television advertising. Instead, in an omission that ignores this dominant public issue, ATF does not even mention television.

We feel that ATF must delay its rulemaking procedures in order to study fully this important area. As we stated in our original comments: "Because of the great potential for deceptive appeals in television and radio advertising, all distilled spirits advertising should be explicitly prohibited and violations should be energetically prosecuted. . . . Because the potential abuses of wine and beer may be as great as those associated with distilled spirits, there should be a serious review of the appropriateness of advertising these products on radio and television. At a minimum, ATF should exercise special vigilance in this area and should require health information in all television and radio advertisements" (48).

Many commentators have noted the special dangers of deceptive and misleading advertising claims being subtly portrayed on television, particularly when addressed to the young (49). Broadcasters, moreover, have a special duty to act as public trustees of the airwaves and this requires special scrutiny of potentially deceptive practices (50). Because of the significant dangers, serious consideration should be given to banning all life-style alcohol advertisements and/or requiring equal time for health information broadcasts.

6. ATF's Definition of "False"

ATF proposes the following definition for the term "false": ". . . any representation, expressed or implied, which is untrue." It gives the following example of a false or misleading claim (without providing any definition of the term "misleading"): ". . . a depiction of the operation of a mechanical device, such as a car or boat, which conveys the erroneous impression that consumption of alcoholic beverages enhances the ability to operate the mechanical device or does not impair a person's faculties." This is commendable, but insufficient. It appears that ATF is using this definition as the only guideline for regulating misleading advertisements.

Yet the FAAA prohibits advertisements which "*irrespective of falsity* . . . relate to irrelevant matters as . . . to be likely to mislead the consumer." ATF continues to ignore [illegible] crucial aspect of the law, which has important implications for "puffery" claims and lifestyle advertising. In its definition, ATF must provide additional guidelines to insure that the FAAA is enforced.

CONCLUSION

We do not suggest by our comments that consuming alcoholic beverages should be discouraged per se. Drinking serves many positive societal and individual functions that are not necessarily associated with harmful effects. Nor do we argue that advertising alcoholic beverages cannot serve important consumer needs. The public benefits from accurate commercial information concerning consumer products. The policy question we address is distinct from these issues and quite specific: what is ATF's legal mandate and how is it related to the public's need for accurate and informative alcohol advertising as a part of a government policy to reduce alcohol-related problems?

ATF has ignored this central issue and has decided instead that its primary role is to mediate competing industry interests. ATF's action is an excellent example of how the "deregulation" dogma so popular among politicians today can be a thin shield for eradicating government responsibility for public health in favor of extensive regulation at the behest of industry representives. An annual industry budget of more than $1 billion for alcohol advertising—advertising which is, in most cases, highly misleading—raises serious public health issues that need to be addressed. ATF is supposed to be the public's representative in challenging and regulating industry practices, not the industry's handmaiden in balancing competing industry claims. ATF is missing an important opportunity to execute the letter and spirit of its Congressional mandate *and* at the same time make a significant contribution to the public health. We urge ATF not to let such an opportunity pass.

REFERENCES AND NOTES

1. Bureau Notice No. 313, 43 Federal Register 54266, November 21, 1978. Page number references refer to Bureau Notice.
2. Mosher, J., and L. Wallack, "Memorandum: Comments on the Proposed Revisions to the Advertising Regulations under the Federal Alcohol Administration Act." Submitted to the Bureau of Alcohol, Tobacco, and Firearms, January 1979, pursuant to Bureau Notice 313. Page number references are to the revised edition of this document in *Contemporary Drug Problems* 8 (1979): 87–106.
3. Bureau of Alcohol, Tobacco, and Firearms, "Notice of Proposed Rulemaking: Labeling and Advertising Regulations under the Federal Alcohol Administration Act." Bureau Notice No. 362, 45 Federal Register 83530,

December 19, 1980. Page number references refer to Bureau Notice.

4. See U.S. Department of Health, Education, and Welfare, Public Health Service, Office of the Assistant Secretary for Health and Surgeon General, *Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention 1979*. DHEW (PHS) Publication No. 79–55071, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 1979; E. Noble, editor, *Third Special Report to the U.S. Congress on Alcohol and Health from the Secretary of Health, Education, and Welfare*, Public Health Service, Alcohol, Drug Abuse, and Mental Health Administration, National Institute on Alcohol Abuse and Alcoholism, Superintendent of Documents U.S. Government Printing Office, Washington, D.C., 1978.
5. Information concerning the response to ATF's notice is provided in the "Notice of Proposed Rulemaking," *supra*, note 3,unless otherwise specified.
6. Maxwell, R. Personal interview with J. Mosher, May 2, 1979.
7. Wallack, L. *An Assessment of Drinking Patterns, Problems, Knowledge and Attitudes in Three Northern California Communities*, Social Research Group Report C–21, School of Public Health, University of California, Berkeley, 1978. Also, L. Wallack, *The California Prevention Demonstration Program Evaluation: Description, Methods and Findings*, Social Research Group Report C23, School of Public Health, University of California, Berkeley, 1979. Results of one survey were reported in Mosher and Wallack, *supra*, note 2.
8. ATF, *supra*, note 3, at 2.
9. The examination was conducted by J. Mosher on May 1, 1979.
10. ATF, *supra*, note 1, at 3.
11. *Id.* at 13.
12. For a discussion of the "mediator" role played by the state in regulating alcoholic beverages and alcohol-related problems, see P. Morgan, "The State as Mediator: Alcohol Problem Management in the Post-War Period," *Contemporary Drug Problems* 9 (1980): 107–40. Evidence of industry acceptance of current regulations is found in its comments to ATF's original notice. Most industry representatives either implicitly or explicitly accepted current ATF practices, advocating only minor reforms to suit particular competitive interests. DISCUS (Distilled Spirits Council of the United States, Inc., the primary trade association for distilled-spirits manufacturers), for example, states in its response: "Although the laws and regulations now in effect on distilled-spirits advertising date to the mid-1930's, we believe that they have stood the test of time very well. . . . Our industry is pleased to have played a role in the process of encouraging uniform protection for the public under these general principles."
13. Mosher and Wallack, *supra*, note 2, at 94–97.
14. Federal Alcohol Administration Act, 27 U.S.C.A. section 205(f) (Supp. 1980). ATF regulatory authority over beer is limited; its regulations have effect only in those states with similar provisions. ATF's authority does not extend to purely intrastate advertising. In practice, however, ATF's regulatory policies carry substantial weight in both of these arenas.
15. Mosher and Wallack, *supra*, note 2, at 94–97; see generally R. Pitofsky, "Beyond Nader: Consumer Protection and the Regulation of Advertising," 90 *Harvard Law Review* 661, 680–81 (Feb. 1977).

16. *Central Hudson Gas & Electric Corp. v. Public Services Commission of New York,* 100 S.Ct. 2343, 2350 (1980). See *Friedman v. Rogers,* 99 S.Ct. 887 (1979). The Court has recognized and maintained this limitation since it first espoused First Amendment protection for commercial speech. See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771–72 (1975).
17. *Friedman v. Rogers, supra,* note 16.
18. *Central Hudson Gas & Electric Corp. v. Public Services Commission of New York, supra,* note 16 at 2350, n. 6. See *Consolidated Edison Co. v. Public Service Commission of New York,* 100 S.Ct. 2326, 2333–2334 (1980).
19. *Friedman v. Rogers, supra,* note 16.
20. The restrictions on commercial speech may be even broader when applied to television and radio advertising because of the broadcaster's duty to act as a public trustee of the airwaves. See *Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969)*. For a full discussion, see R. Goldsen, "The Great American Consciousness Machine: Engineering the Thought-Environment," *Journal of Social Reconstruction* 1 (June 1980): 87–102, 97–100.
21. For discussion, see R. Goldsen, *supra,* note 20.
22. U.S. District Court, Washington D.C., Civil Action #81–0125 (February, 13, 1981). See BATF, *News,* FY–81–27, February 23, 1981, for discussion of this recent decision.
23. See L. Wallack, "Mass Media Campaigns in a Hostile Environment: Advertising as Anti-Health Education," paper presented at An International Conference on Health Education and the Mass Media, organized by the Scottish Health Education Group, Edinburgh, and the Advertising Research Unit, University of Strathclyde, Glasgow, March 1981, in Edinburgh, Scotland.
24. For additional discussion of the issues raised here see L. Wallack, "Mass Media Campaigns: The Odds against Finding Behavior Change," forthcoming as a chapter in a National Institute on Drug Abuse monograph on prevention. The prepublication copy of the paper is dated October 1980.
25. This is an approximation based on a conversation with S. Maloney of the Division of Prevention, National Institute on Alcohol Abuse and Alcoholism.
26. According to *The Bottom Line* 2, no. 3 (1978): 2–12, there are several ways of estimating advertising expenditures. Using measured media (newspapers, magazines, radio, television, outdoor and transportation ads) expenditures in 1977 amounted to $492 million. If measured and unmeasured media (e.g., point of purchase) are totaled the amount increases to $687 million. If expenditures are estimated from the total amount of sales, then between $1.06 billion (3% of sales) and $1.77 billion (5% of sales) were spent on alcoholic beverage advertising in the United States in 1977. Since 1977 advertising expenditures have continued to outpace inflation. See "Ad Spending Outpaces Economy," *Advertising Age,* January 8, 1979, pp. 5–8, and R. Coen, "First '80 Figures Show Media Ads Continue to Rise," *Advertising Age,* June 9, 1980, pp. 3ff. See also E. Wendt, *Beverage World* (January 1981), who reports that ad spending for wine, beer, and distilled spirits will continue to outpace inflation in 1981.
27. See M. Katzper, R. Ryback, and M. Hartzman, "Alcohol Beverage Advertisment and Consumption," *Journal of Drug Issues* 8 (1978): 339–53.

28. See W. Breed and J. De Foe, "Themes in Magazine Alcohol Advertisements: A Critique," *Journal of Drug Issues* 9 (1979): 511-22.
29. See J. De Foe and W. Breed, "The Problem of Alcohol Advertisements in College Newspapers," *Journal of American College Health Administrators* 27 (1979): 195-99.
30. See C. Atkin and M. Block, "Content and Effects of Alcohol Advertising—Report 1: Overview and Summary of Project." Report submitted to Bureau of Alcohol, Tobacco, and Firearms, Federal Trade Commission, National Institute on Alcohol Abuse and Alcoholism, and Department of Transportation, 1980, p. 8.
31. *Id.* at 10.
32. *Id.* at 16.
33. *Id.* at 18.
34. *Id.* at 20.
35. See D. Pittman and M. Dow Lambert, *Alcohol, Alcoholism and Advertising*. St. Louis, Missouri: Social Sciences Institute, Washington University, 1978.
36. Mosher and Wallack, *supra*, note 2, at 89.
37. A similar strategy was used regarding cigarette advertising. For a discussion, see Mosher and Wallack, *supra*, note 2, at 93.
38. For discussions of these types of policy initiatives, see J. Mosher and J. Mottl: "A Report on Federal Regulation of Drinking Behavior and Consequences, The Role of Non-Alcohol Agencies," in M. Moore and D. Gerstein, eds. *Alcohol and Public Policy: Beyond Prohibition*. Washington, D.C.: National Academy Press, forthcoming; R. Room and J. Mosher, "Out of the Shadow of Treatment: A Role for Regulatory Agencies in the Prevention of Alcohol Problems," *Alcohol, Health and Research World* 4, no. 2 (1979–80) 11–17; R. Popham, W. Schmidt, and J. deLint (1976), "The Effects of Legal Restraint of Drinking" in B. Kissin and H. Begleiter, eds., *The Biology of Alcoholism*, Volume 4: *Social Aspects of Alcoholism* (New York: Plenum Press, 1976).
39. These recommendations supersede our previous specific recommendations. Determining which lifestyle claims are too deceptive on a case-by-case basis is an unreasonable administrative burden and creates risks of unfair and arbitrary determinations.
40. See ATF, *supra*, note 3, for ATF's presentation of current rules and proposed regulatory revisions for each of these sections.
41. See, e.g., Miller Brewing Company's response to ATF Bureau Notice 313 (see ATF, *supra*, note 1).
42. For a recent case concerning the use of the term "light," see discussion in text, *supra*.
43. Bureau Notice 372, 46 *Federal Register* 24962, May 4, 1981.
44. For a partial list of chemicals permitted by ATF to be used in wine, for example, see 27 *C.F.R.* section 240.1051. For a discussion of the potential dangers posed by chemical additives in alcoholic beverages, see M. Jacobson and J. Anderson, *The Chemical Additives in Booze*, Washington, D.C.: Center for Science in the Public Interest, September 1972.
45. See, e.g., letter to G. R. Dickerson, Director, ATF, from M. Doyle, Legal

Counsel, the Wine Spectrum, March 23, 1979, in response to Bureau Notice 313 (see ATF, *supra*, note 1).

46. See Mosher and Wallack, *supra*, note 2 at 102; J. Mosher, "Marketing of Alcoholic Beverages in California," paper prepared for the Second Plenary Meeting of the International Study of Alcohol Control Experiences, February 1979, Asilomar, California.
47. See Mosher and Wallack, *supra*, note 2 at 102.
48. *Id.* at 102.
49. See, e.g., Goldsen, *supra*, note 20.
50. See, *supra*, note 20.

BATF LIPSERVICE TO CONSUMERS

Senator **Abdnor**. Again, Mr. Silverglade, we thank you, because we are seeking information here. Of course, I think you realize this particular subcommittee is somewhat limited in how far we can go with these problems. We kind of react instead of create here to proposals with our limited jurisdiction in the Congress. Some of the proposals that are made may come up before other committees.

I gather you feel consumers are more or less just getting lipservice now from the situation the way it is; is that correct?

Mr. **Silverglade**. That is correct. We would hope that the subcommittee recommend to the full committee to appropriate funds to the FTC and FDA.

Senator **Abdnor**. You wouldn't want to do away with the whole function. You would agree, wouldn't you, that there is some very worthwhile function going on?

Mr. **Silverglade**. Advertising and labeling regulation of alcoholic beverages is an extremely important government function, considering the effect of these products on society.

Senator **Abdnor**. Were you here this morning to hear some of the others? I think that is very important. I am not going to argue on that at all. That is part of it. But we also have some policing to do on an international and national level and also between States. That has to be a part of any package. I am sure you recognize that, don't you?

Mr. **Silverglade**. Sure. Our comments are really confined to labeling and advertising. BATF has other functions. In the sense those functions perhaps belong somewhere in the Treasury Department, I will leave that to the industry to argue over where those other functions should be sent or maintained at BATF. However, labeling and advertising we believe really belongs at the FTC and FDA because those are the agencies that really have the expertise and dedication to work in those areas.

Senator **Abdnor**. In the hands of the Customs Service it doesn't do much for you; is that right?

Mr. **Silverglade**. That is correct.

INGREDIENT LABELING OF ALCOHOLIC BEVERAGES

Senator **Abdnor**. Let me ask you, I am sure you are aware of the Department of the Treasury's decision to rescind the BATF regulations for ingredient labeling of alcoholic beverages. I am sure that has some cause for your testimony today, does it not?

Mr. **Silverglade**. We became involved with the BATF in 1972 when we petitioned originally the Internal Revenue Service and then BATF to list the ingredients, to require regulations that would list the ingredients on alcoholic beverages.

In 1980 they promulgated the final rule which would have required ingredient disclosure either on the label or directly to the consumers. Then abruptly they reversed that course in 1981 and rescinded the rule before it was implemented. However, we are very concerned with the variety of consumer protection issues involving advertising regulations and other labeling requirements. So our interest stems from that first proceeding, but it is actually now broader than ingredient labeling.

Senator **Abdnor**. Thank you very much. We do appreciate your testimony.

We are limited to what we, the committee itself, can do with much of your recommendations. Nevertheless, we are happy to have that testimony.

I think we have gotten some worthwhile information today. You are the last witness for the day. But tomorrow should be interesting. So with that, I thank you for coming.

SUBCOMMITTEE RECESS

The subcommittee now stands in recess until tomorrow morning at 10 a.m., when we will hear testimony from the officials of the Treasury Department and, after that, the National Rifle Association.

We thank you all, and the subcommittee stands in recess. Thank you.

[Whereupon, at 4:12 p.m., Monday, February 22, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, February 23.]

PROPOSED DISSOLUTION OF BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

TUESDAY, FEBRUARY 23, 1982

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL
SERVICE AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:45 a.m., in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. James Abdnor (chairman) presiding.

Present: Senators Abdnor and DeConcini.

CONGRESSIONAL WITNESSES

STATEMENT OF SENATOR DE CONCINI

Senator **ABDNOR**. The subcommittee will now come to order.

We will continue our hearings into whether or not this committee should provide appropriated funds in order for the Department of the Treasury to be able to transfer the functions of the Bureau of Alcohol, Tobacco, and Firearms to the U.S. Customs Service and the Secret Service. The opening statement of Senator DeConcini will be inserted in the record at this point.

[The statement follows:]

STATEMENT OF SENATOR DENNIS DECONCINI

Mr. Chairman, I am pleased that you have decided to hold these important hearings on the Administration's proposed Reorganization of the Bureau of Alcohol, Tobacco, and Firearms (BATF) and the transfer of its functions into the U.S. Customs Service and the U.S. Secret Service within Treasury.

I believe that the Committee made the correct decision when it decided to "freeze" the implementation of the Reorganization until March and to earmark funds to maintain current enforcement activities under the Federal Alcohol Administration Act. Frankly, I believe that the Administration acted precipitously in trying to push through this major reorganization in the waning days of the last session of Congress, without hearings, and without even a document telling the Committee what specific personnel and policy proposals were contained in the Plan. A number of very serious questions remain about this Reorganization Plan, particularly in the area of what impact the merger of BATF into Customs and Secret Service will have on key, on-going Customs and Secret Service programs, actitivies, and budgets. Hopefully, these hearings will help to answer some or all of those questions.

Let me say at this point that I have not taken a position on the proposed Reorganization. The testimony presented by outside witnesses to-date seems to be overwhelmingly against the merger of BATF into other Treasury units and supportive of the free-standing BATF. However, I believe that there are good arguments on the other side of this issue as presented by the Treasury Department in support of a transfer of BATF functions into two, important and sell-organized Treasury agencies: Customs and Secret Service.

Nevertheless, I commend the Chairman for holding these hearings in a timely fashion and for opening the hearings to interests on both sides of the Reorganization issue. The Chairman has allowed virtually everyone who wished to testify, the opportunity to do so, regardless of his or her views on the matter before the Committee. He has not stacked the deck or attempted to thwart Treasury's effort to come forward in support of the Reorganization Plan. I trust that the testimony of the past two days will help the Committee to make a final, responsible decision on the Administration's Reorganization Plan.

Thank you.

STATEMENT OF HON. JOHN GLENN, U.S. SENATOR FROM OHIO

BATF'S ARSON ENFORCEMENT FUNCTIONS

Senator **Abdnor**. Our first witness this morning is Senator John Glenn, who has an interest in one part of the Department.

We are awfully pleased that you could come down, Senator Glenn, and start us off this morning. We do have a rather heavy schedule; we would like to complete by noon.

We are particularly pleased to have you.

You go right ahead.

Senator **Glenn**. Thank you, Mr. Chairman.

I was sorry I could not be here yesterday, but thank you for the opportunity to testify in favor of an agency which has made such a significant contribution to our fight against this Nation's fastest-growing crime.

In my testimony today I will address the success of the Bureau of Alcohol, Tobacco and Firearms (BATF) in combating the crime of arson and the conditions under which I could support the transfer of BATF's arson enforcement functions to the Secret Service.

Before I begin, I would like to briefly discuss my involvement in the battle against arson. Since coming to the Senate, I have introduced arson legislation in each of the last three Congresses. In doing so, I succeeded in having legislation passed which temporarily gave arson major crime status. As a result, the FBI is beginning to put together reliable national statistics on arson.

I might add that making arson a part I crime was no small effort; it surprised me that would be the case because it turns out that what goes on the major crime list, i.e., part I crime, is set by the International Association of Chiefs of Police and has been since this job of determining what goes on that list was established over 50 years ago. There has never been another new type crime added to that list until we made arson a part I crime. So we ran into considerable resistance in getting that put on the list.

Last year, I introduced the Anti-Arson Act of 1981—S. 294. This legislation would help us to develop a national strategy to combat arson and help us to coordinate the Federal antiarson effort. It would also permanently elevate arson to major crime status and make arson research and training a permanent mission of the U.S. Fire Administration.

LACK OF ACTION ON S. 294

I am dismayed that no action has been taken on S. 294 by the Committee on Governmental Affairs. I am even more dismayed by the administration's apparent intention to abandon the Federal antiarson effort.

In addition to its refusal to comment on S. 294, last year, the administration announced plans to "deemphasize" and "phase out" BATF's arson enforcement program. This year it plans to zero fund the U.S. Fire Administration, an agency which provides the Federal focus for national antiarson efforts.

Mr. Chairman, we simply cannot sit idly by and watch our cities and towns be devoured by a firey wave of death and destruction and that is about what it has come to in many areas of the country. We must not abandon the Federal effort to assist local authorities to combat arson.

STATISTICS ON ARSON IN AMERICA

The United States has the highest rate of arson in the entire world. In the words of Louis R. Guiffrida, Director of the Federal Emergency Management Agency, "Arson is a disaster in America."

Arson is this Nation's fastest growing crime: it quadrupled in the last 10 years and increased tenfold in dollar losses; represents 25 percent of all fires and also 25 percent of our fire insurance premiums—in other words, 25 percent of our own home insurance policies go to pay for arson; kills 1,000 people annually and injures as many as 10,000 more; causes direct property losses of at least $1.3 billion annually; and results in indirect losses estimated at up to $15 billion annually.

BATF ARSON ENFORCEMENT PROGRAM

The most effective Federal program aimed at cracking down on those who put the torch to property is the antiarson program of the BATF. The BATF arson enforcement program has been a model of Federal-State-local cooperation. Through it the Federal Government has provided vital assistance to States and localities which bear the major law enforcement responsibility in this area. This is attested to by the recent adoption of a resolution in support of the program by the International Association of Chiefs of Police, a copy of which I will submit for the record.

NATIONAL RESPONSE TEAMS

BATF has organized national response teams capable of responding to any location in the country within 24 hours to assist in major arson investigations which have, in the 12 months which ended August 31, 1981, resulted in 8 indictments out of 21 investigations with 4 cases being determined to be accidental and the remaining 9 cases still under active investigation.

ARSON INVESTIGATIONS

BATF has initiated 667 arson investigations which resulted in 303 suspects being recommended for prosecution during fiscal year 1980, with a ratio of 45 defendants per 100 investigations compared to the national average of 9 defendants per 100 investigations. In addition, 79 defendants were convicted during fiscal year 1980 and cases are still pending against others.

BATF has organized task forces, such as the one which solved the MGM Grand Hotel fire in Las Vegas.

They have achieved conviction rates in arson cases of 40 percent, 60 percent, 81 percent and 91 percent in Philadelphia, Chicago, Houston and Los Angeles, respectively.

They conducted arson-for-profit detection training courses for State and local investigators.

They provided laboratory assistance in complex cases. And they saved 54 million insurance dollars in fiscal year 1980—the potential payout saved for arson-related claims.

As part of my testimony, Mr. Chairman, I am submitting for the record an article entitled National Response Teams: BATF's Coordinated Effort in Arson Investigations, which was printed in the December FBI Law Enforcement Bulletin.

Despite BATF's impressive record, we are now faced with its imminent demise. I question why such an effective agency is being dismantled and suspect that its reorganization is already fait accompli. However, I am more concerned about reports that the uncertainty over the future of BATF may do irreparable damage to its arson enforcement capability. Morale is dangerously low. Experienced agents are leaving and the quality of arson investigations is undoubtedly slipping.

Accordingly, I urge this subcommittee to promptly determine whether or not the BATF will be able to stand on its own feet and survive as a separate entity within the Treasury Department. Unless the subcommittee is convinced that it can, we should, perhaps, drop our resistance to the transfer of BATF functions under specified conditions.

TRANSFER OF ARSON FUNCTIONS TO SECRET SERVICE

If that is the case, I would support the transfer of the arson enforcement functions of the BATF to Secret Service under the following conditions:

That the BATF explosive unit, particularly its arson enforcement program, is maintained as a separate unit within the Secret Service, and that this unit have the authority to manage its own budget and staff and maintain a separate identity within the Secret Service;

That the budget of this unit be sufficient to support an effective level of arson enforcement, such as existed in fiscal year 1981, and that sufficient funds must be earmarked for this purpose without limiting expenditures to a specified sum;

That the arson response teams and arson sponsored task forces be continued;

That special arson training of State and local investigators, chemists, and others be continued;

That existing BATF laboratories be maintained and laboratory assistance services to State and local jurisdictions be continued; and

That the investigatory/law enforcement role of agents assigned to the explosives and arson unit not be subordinated to the protective services role of the Secret Service.

Finally, I would hope that the subcommittee would seek and obtain assurances from the Department of Treasury and the Secret Service that the level of commitment I have outlined be maintained.

INSERT MATERIAL FOR RECORD

As part of my testimony, I have prepared a list of questions which the subcommittee may wish to consider asking administration witnesses. They are things I think are important to have on the record.

I also would like to submit for the record several letters which illustrate the broad support for the BATF arson enforcement program.

I feel strongly that regardless of its location within the Treasury Department, this program can and must meet the demand for an effective and coordinated Federal enforcement effort in the battle against arson. As President Reagan recently said:

> Arson cannot be allowed to continue to have such a devastating influence on our society. By working together at the local, State and Federal levels, I believe we can significantly reduce the loss of life and property we are experiencing because of this crime.

Clearly, BATF's record of providing invaluable assistance to State and local agencies meets the President's call for working together in our fight against arson. Its arson enforcement program is a paradigm of federalism at work.

Senator Abdnor, thank you again for the interest and leadership that you have shown in this area. I, or my staff, will be happy to assist the subcommittee in any way we can.

SYMPHONY ROADS TENANTS ORGANIZATION

I would add only a couple of words here. Back when we first started our efforts on arson several years ago, we had a whole series of hearings that developed some of the patterns of arson that were brought together under the organization known as the Symphony Roads Tenants Organization out of Boston. They could actually predict arson by some of the changes in patterns of ownership of properties that were inflated. Insurance was put up as properties were transferred until there was a fire. Then, they collected the inflated insurance values. We went into the situation in Seattle where they have taken a very active public awareness campaign approach to arson, which seems to be having great effect. We went into the organized crime, the interstate aspects of organized crime in arson, and all of the different techniques that they use. So, we do have a big background, a lot of hearing time, and a lot of expert witnesses that have testified about arson over the past several years.

I hope that whatever disposition is made of the proposals that the administration has made—that whatever occurs, that we not lessen our efforts in the fight against arson. It is one-fourth of every person's home insurance premium that we pay on the average, and that doesn't even take into account, of course, the deaths, injuries, the huge property losses that occur.

I am hoping we can keep some pressure on this fastest growing crime that devastates too much of our country.

Thank you.

[The insert material from Senator Glenn follows:]

LIST OF PROPOSED QUESTIONS FOR ADMINISTRATION WITNESSES

1. What is the minimum funding level necessary to continue the BATF's arson enforcement program at current levels? How did you arrive at this figure?

Does this amount account for inflation?

Does this amount account for salary increases?

If there is a real decrease in programs funding, could the program continue to operate effectively?

2. Assume the transfer of the arson program to Secret Service, how would the budget for the program for the remaining fiscal year and fiscal year 1983 compare to the fiscal years 1980 and 1981 budget?

3. What percentage of the funding for the arson program is normally allocated to salaries for agents? For support staff?

If there is a real decrease in funding for fiscal years 1982 and 1983, how many agents will be lost? Support staff?

4. How many BATF laboratories were in operation in fiscal years 1980 and 1981?

Assuming the transfer of the arson program, how many laboratories would continue to operate and at what levels of operation?

5. Assuming the transfer, would the laboratories continue to provide assistance to State and local agencies and at what level of assistance?

How many States have adequate facilities to perform the type of arson-related work now performed by BATF laboratories?

6. How many chemists, arson investigators and others from State and local agencies did BATF provide training for in fiscal years 1980 and 1981? Assuming the transfer, how many would receive training in fiscal years 1982 and 1983?

7. Assuming the transfer of various BATF programs into Secret Service, how will Secret Service be organized?

How will the explosive unit and the arson program fit into that organization?

Describe the reporting requirements?

8. Describe the anticipated protective service role for agents in the arson program.

What percentage of arson agents' time would normally be devoted to performing protective services? During election years?

9. Describe any other anticipated roles that agents in the arson program would be required to perform, for example, investigation of counterfeiting or bank fraud?

What percentage of arson agent time would normally be devoted to performing these type of activities?

10. Can you assure this subcommittee that sufficient manpower will always be available for arson enforcement functions?

When there are conflicts, will arson enforcement or protective services be given priority?

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
ANTI-ARSON EFFORTS
1981

WHEREAS, The International Association of Chiefs of Police is a professional law enforcement association comprised of chief law enforcement administrators from the United States and 66 nations; and

WHEREAS, Arson and arson-related crimes represent a significant and growing law enforcement problem in the United States; and

WHEREAS, The widespread and indiscriminate character of arson crimes result in death and injury to targeted and innocent victims alike, thereby creating a serious hazard to public safety, causing billions of dollars in property loss yearly; and

WHEREAS, Arson schemes are often complex, multijurisdictional and geographically unconfining in nature, with the presence of organized crime and white collar criminals further compounding the problem for state/local agencies acting alone; and

WHEREAS, The Bureau of Alcohol, Tobacco and Firearms active role through the application of Arson Task Force units, National Response Teams, training, laboratory and technical expertise has provided, in concert with other federal agencies, invaluable assistance to state/local agencies in addressing violent arson crimes on a national basis; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police opposes any curtailment to federal anti-arson activity and support; and be it further

RESOLVED, That the International Association of Chiefs of Police supports and endorses the continued efforts of the Bureau of Alcohol, Tobacco and Firearms to address those elements of arson-related criminal activity that warrants federal emphasis; and be it further

RESOLVED, That copies of this Resolution be forwarded to the President of the United States, the Attorney General of the United States, the Director of the Office of Management and Budget and to other appropriate parties interested in the prevention and control of arson.

National Response Teams: ATF's Coordinated Effort in Arson Investigations

By
ROBERT E. SANDERS
Assistant Director
(Criminal Enforcement)
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C.

While widely recognized in conjunction with the enforcement of Federal statutes involving firearms, explosives, liquor, and tobacco, the role of the Bureau of Alcohol, Tobacco and Firearms (ATF) in addressing arson-related crimes is a relatively new innovation.

ATF's participation in an arson investigation is predicated on the fact that a violation of the Gun Control Act has occurred or is suspected. Briefly stated, Title II of the Gun Control Act amended the 1934 National Firearms Act and requires that various "destructive devices" be registered with the Secretary of the Treasury in order to be legally possessed. Since such devices are frequently employed by arsonists to initiate the destruction of property by fire, ATF has a clear mandate to exercise jurisdiction, if a need for Federal involvement is identified.

Similarly, Title XI of the Organized Crime Control Act provides criminal sanctions against those individuals charged with the destruction of certain types of property by the use of "explosives." Incorporated in this legislation is a statutory definition of "explosives," which includes various types of incendiary devices (*e.g.*, Molotov cocktails, a hotplate connected to combustible material, etc.) and flammable liquids (*e.g.*, gasoline, paint thinner, cleaning fluids, etc.), all of which are also "tools" commonly used by the arsonist. Accordingly, this type of crime clearly falls within the purview of ATF's explosive jurisdiction.

Although ATF has had an element of statutory jurisdiction since 1968 that has been applied toward certain arson-related crimes, the formal arson enforcement program was not initiated until February 1978. The initial thrust of the formalized program was structured toward the promotion of the "arson task force" approach. Previous experience had identified a need to establish full-time arson task force units in selected major metropolitan areas throughout the Nation that would involve the cooperative, coordinated efforts of local, State, and other Federal agencies, working in conjunction with Federal and State prosecutors to apprehend and bring arson violators to justice.

Furthermore, ATF's experience in conducting bombing and explosive-related arson investigations vividly revealed another important factor—a timely coordinated response to such incidents was critical in determining the exact "cause and origin" of the respective incident and apprehending those responsible for the crime. It was also evident that the nature and magnitude of many arson/explosive incidents exceeded the capability of State and local agencies, as well as the resources of local ATF offices.

Consequently, in November 1978, ATF developed and implemented a national response capability by establishing two national response teams located in the eastern and western sectors of the United States. Each team consisted of 10 special agents, plus laboratory and technical support personnel and basic equipment needs. The objective of the concept was to provide a 24-hour response to any location in the United States, augmenting the capability of State and local agencies and/or local ATF offices with expert assistance to conduct bombing and explosive-related arson investigations of major proportions.

The first activation of the national response team occurred on May 25, 1979, after a major arson caused an estimated $5 million in property damage to a clothing store and adjoining businesses in the downtown area of

Shelby, N.C. Four firemen lost their lives while attempting to bring the blaze under control. A public utilities employee also died in the incident. ATF's national response team was activated to the site and immediately initiated an investigation. The subsequent investigation of this incident was successfully concluded through the cooperative efforts of the North Carolina State Bureau of Investigation, the Shelby Police Department, and ATF. On April 21, 1980, the principal defendant was convicted in State court and sentenced to a total of 50 years imprisonment.

During August 1980, ATF expanded its response capability by replacing the two-team concept with four national response teams to aline with ATF's newly established regional offices located in New York, Chicago, Atlanta, and San Francisco. Each team was placed under the control of a regional director of investigations, supervised by an assistant special agent in charge of a district office within the respective region, and led by a team leader selected from the special agents assigned to each unit.

> ". . . the close coordinated efforts of police department and fire service personnel have enhanced the teams' ability to impact upon bombing and arson-related crimes."

The new configuration has enhanced ATF's ability to respond more effectively to major explosive/arson incidents. As with the initial teams, each of the four teams is composed of 10 special agents, a forensic chemist, and an explosives specialist from ATF's Explosives Technology Branch. In addition, each of the current team members has completed specialized training at the Federal Law Enforcement Training Center in Glynco, Ga. The teams are equipped with the most up-to-date equipment, including the prototypes of ATF's new explosives response vehicles.

Since the implementation of the new national response team configuration in August 1980, the specialized teams have been activated in response to 21 significant arson or explosive-related incidents causing 14 deaths, 102 injuries, and an estimated $30.5 million in property damage. Eight of the incidents have resulted in the identification of multiple suspects, with prosecution pending in Federal and/or State court; four were determined to be accidental explosions; and nine of the incidents are still being actively investigated, with numerous leads being pursued.

During April 1981, a new dimension was added to the capabilities of the response teams. In conjunction with the U.S. Fire Administration (USFA), 20 "cause and origin" specialists from fire service agencies throughout the United States were selected to assist ATF's national response teams in certain arson investigations when that particular type of expertise is required but not available locally.

Following their selection, each "cause and origin" specialist was trained at the Federal Law Enforcement Training Center in Glynco, Ga., simultaneous with a 1-week training course for ATF special agents who are assigned as alternate members of the national response teams. Since the training of these "cause and origin" specialists, their role has been invaluable in subsequent investigations wherein their expertise was required. The USFA deserves a great deal of credit for their assistance in developing this capability as an investigative resource for the response teams.

Although significant accomplishments are being reflected through the selective use of the national response teams, the support provided by State and local agencies during this past year has contributed to the overall effectiveness of the response team concept. Working hand-in-hand, the close coordinated efforts of police department and fire service personnel have enhanced the teams' ability to impact upon bombing and arson-related crimes. It is obvious that a concerted effort at all levels of government is required if we are to impact upon these heinous types of crimes that are being committed in America today without regard for human life and property.

FBI

LETTER FROM GLENN E. ALEXANDER
DIRECTOR AND CHIEF
DAYTON FIRE DEPARTMENT

October 30, 1981

Honorable Donald T. Regan, Secretary
U.S. Department of the Treasury
Washington, D.C. 20510

Dear Mr. Secretary:

It has recently come to our attention that the Administration has decided to de-emphasize the anti-arson program of the Bureau of Alcohol, Tobacco and Firearms (ATF), and that consideration is being given to a reorganization of ATF, a reorganization which might kill that bureau's anti-arson campaign in fact if not in theory.

I would like to urge as strongly as possible that, whatever administrative changes are necessary to streamline ATF's operation, the Anti-arson Program remain a high priority with your department.

The threat from arson almost cannot be over-emphasized: nearly 1000 lives a year; over $1 billion in direct property loss; probably $15 billion in indirect losses; one-third of all fire insurance premiums paid to cover arson claims;

With a nationwide conviction rate of two percent!

In Dayton, we have been as aggressive as any city in battling arson. With the help of LEAA Funds we set up a Regional Arson Task Force to study the problem (ATF Agent, Lary Clendinen was part of that team); we instituted a County-wide Arson Abatement Unit to investigate incendiary fires (ATF agents actively participate in stakeouts, investigations and arrests); we have publicized the arson problem with a multi-media awareness campaign.

With the help of ATF we have gotten our clearance rate up to 15 percent, almost triple the national average. The manpower, expertise and equipment supplied by ATF has accounted directly for at least six arrests in Dayton alone during the past year.

The assistance of ATF has been invaluable especially in those incidents involving arson-for-profit schemes; schemes which involve organized crime and which are multi-jurisdictional and not readily pursued by agencies tied to a single locality. The ATF's task force approach has provided a natural coordinative center for our department's county-wide arson abatement unit.

In short, ATF has been an integral part of our anti-arson team - and ours is one of the most innovative, successful arson units in the country. ATF has assisted materially in our success.

Much remains to do, however. It would be a step backward if ATF's assistance were withdrawn, and we heartily urge your continuing support. If I can be of assistance in the future, please feel free to contact me.

Sincerely,

Glenn E. Alexander
Director & Chief
Dayton Fire Department

LETTER FROM CHARLES L. BUTTS

Charles L. Butts
Minority Whip

Committees:
Elections, Financial Institutions
and Insurance
Ways and Means
State Government and Federal
Relations
Joint Committee on Agency
Rule Review

November 10, 1981

The Honorable Donald T. Regan
Secretary of the Treasury
15th Street and Pennsylvania Avenue N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

As the sponsor of arson legislation that has been adopted by 47 states, I am deeply concerned over the future of the anti-arson program of the Bureau of Alcohol, Tobacco and Firearms. I am fearful of the Reagan administration's attempts to de-emphasize the anti-arson program and to perhaps reorganize or entirely eliminate the program.

This action, I feel, would be disastrous as arson has reached epidemic proportions, and many states and localities are ill-equipped to deal with the problem. They lack the techniques and equipment to aid in the prediction, prevention, training and control of arson.

The assistance provided to these states and localities by the Bureau of Alcohol, Tobacco and Firearms has benefitted greatly their struggle to stem the rising tide of this heinous crime. To de-emphasize or eliminate the anti-arson program would severely limit the ability to combat the arson problem.

I strongly urge you to take whatever steps necessary to ensure the future of this valuable program.

Sincerely,

Charles L. Butts

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

LETTER FROM JOHN A. GANNON, PRESIDENT

The Honorable John Glenn
United States Senate
Washington, D. C. 20510

Dear Senator Glenn:

I would like to take this opportunity to applaud your recent efforts in maintaining the arson law enforcement program of the Bureau of Alcohol, Tobacco and Firearms.

As you are aware the Reagan Administration intends to eliminate the Bureau transferring their responsibilities to the Secret Service and the U. S. Customs Division. The Explosives Enforcement Office of BATF, which handles arson, is expected to go to the Secret Service. Under the re-organization plan, 1200 BATF agents are to be moved into the Secret Service.

We have been extremely concerned in that no guarantees have currently been made that the arson programs and activities will be maintained within the Secret Service. We do understand however, that there seems to be some internal support in the Treasury Department on this issue. Bob Palace, Deputy Assistant Secretary for Enforcement & Operations, to whom the Secret Service BATF and Customs Director report, is reported to be promoting high visibility for arson within the Secret Service. He appears to support the abolishment of BATF and the transfer of their functions.

We have been inspired by your interest in the problem of arson for some time. The IAFF will stand ready to assist you in any manner to see this program, which provides such vital assistance to our people in the field, is maintained.

Thanking you again for your interest and leadership in this area, we remain

Sincerely,

Jack

John A. Gannon
President

LETTER FROM JOEL V. VARN, JR., CHAIRMAN

California Arson Prevention Committee

California Arson Prevention Committee
P.O. BOX 740 • ONTARIO, CALIFORNIA 91761

December 7, 1981

Senator John Glenn
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Glenn:

I am the chairman of the California Arson Prevention Committee which is an unincorporated association whose primary purpose is to foster cooperation among interested individuals and groups in combatting the problem of arson and to organize, for mutual benefit, those public officials and private persons engages in the control of arson and kindred crimes. The committee's members include representatives of the insurance industry, fire services, FAIR PLAN, California Chamber of Commerce, California Department of Insurance, the California State Faire Marshall, We Tip, Inc., and various prosecuting agencies in the state of California.

The committee has recently been informed of the possibility of the dissolution of the Bureau of Alcohol, Tobacco and Firearms. The loss of the bureau's agents in the war against arson, would be a severe blow.

As you are well aware, arson is a growing crime which poses a serious danger to the population and which accounts for a tremendous capital loss yearly. With the assistance of agencies such as the Bureau of Alcohol, Tobacco and Firearms significant gains have been made in the attempt to combat this problem. The bureau provided invaluable training to arson investigators in the field of arson for profit, and provided significant assistance in the training of arson investigators both to local agencies and thru the office of the California State Fire Marshal. In the state of California bureau agents have been directly involved assisting the investigation of arson in Los Angeles and San Diego counties. In both counties, agents are members of Arson Strike Teams which have been beneficial in the successful prosecution of various arson cases.

The bureau's Arson Response Teams represent a pool of highly trained investigators, available to local jurisdictions experiencing major arson fires, which would otherwise be unavailable. But for the availability of this team an arsonist would have successfully avoided detection in a major fire which had resulted in the death of a fireman in Los Angeles County in the past year.

It is for this reason the committee solicits your support in the maintaining of these agents so they can continue to do battle against the crime of arson. The loss of the ATF agents qualified as arson specialists would not only be a severe blow to the attempts to combat arson but also would be a tragic waste of money.

The committee has long recognized the importance of trained arson experts in any attempt to get a "lid" on the arson problem. This expertise is not acquired overnight and requires considerable training and experience. To have invested time and money into training of these agents only to have them lost to the arson investigation effort would not only be a step backwards but would be a tragic waste of the funds expended in qualifying these investigators.

If the decision for the dismantling of ATF is irreversible perhaps some consideration could be given to the utilization of these trained personnel by the creation of a specific arson investigation unit assigned to the National Fire Administration. In this capacity these agents could not only lend assistance in arson investigation but could be invaluable training source for local jurisdictions.

I commend you for your continuing efforts in this war on arson and offer to you whatever assistance our committee can provide.

Sincerely,

Joel V. Varn, Jr.

LETTER FROM ROBERT W. GRANT, PRESIDENT

NFPA®
"Moving Mankind Toward Safety From Fire"

NATIONAL
FIRE PROTECTION
ASSOCIATION
INTERNATIONAL

ROBERT W. GRANT, President

January 7, 1982

Honorable John Glenn
204 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Glenn:

The National Fire Protection Association (NFPA) is aware of your interest in the arson problem, and we would like to bring to your attention our concern regarding the continuation of the national arson program as presently being conducted by the Bureau of Alcohol, Tobacco and Firearms (BATF).

The National Fire Protection Association has been very impressed with the accomplishments of BATF in the arson field. It is our belief that a great deal of the success of this program is a direct result of the cooperative efforts made by BATF personnel in working closely with state and local fire officials. Arson is a state and local problem because of the very basic requirement associated with initial fire cause determination required by the initial fire service personnel on the fire scene.

It is the National Fire Protection Association's feeling that this important program should be maintained, and we strongly urge that appropriate consideration be given to keeping this program in place within the Department of the Treasury. I have enclosed for your information a position paper of NFPA, provided for the record during the recent hearing on H.R.5043, which proposed the removal of this valuable program from the Department of the Treasury to the Department of Justice.

Your consideration in seeing that this effective program is maintained within the Department of the Treasury is appreciated. Please don't hesitate to call upon me or the Association's Washington Representative, Mr. Robert B. Smith, National Fire Protection Association, Capital Gallery, Suite 220, 600 Maryland Avenue, S.W., Washington, DC 20024 (202) 484-8200, if we may be of any further assistance to you in this regard.

Sincerely,

Robert W. Grant

Robert W. Grant
President

BATF FUNCTIONS

Senator **Abdnor**. Senator Glenn, I want to commend you for your testimony. You have stated the facts here, as to where we stand with the arson problem.

Like you, my greatest concern is that whatever route we take that we are sure that this problem is still under control.

Yesterday we had a number of witnesses, three witnesses. I think Mr. Smith said that his group reported 27 fires related to arson was something like 27 percent, which I had not realized how great the problem really is.

Let me ask you: Are you satisfied with the way the Bureau of Alcohol, Tobacco, and Firearms is carrying on its function?

Senator **Glenn**. I think they have been almost a model of cooperation at Federal, State and local levels. They have done a lot of training programs. I know in my own State we have had people actively trained that have come back and done a better job, then, not only the detection and prosecution, but also the prevention of arson.

It has not solved all the problems in any other State either, but it has been a step in the right direction.

One of the difficulties, Mr. Chairman, is with the whole arson picture. It is so difficult to get convictions in this area. You need a great deal more training than in many other areas of crime detection because too often the evidence burns up. It is very difficult to analyze arson, to get a conviction and to get enough evidence that will hold up in court.

WORK VARIATIONS BETWEEN ATF AGENTS AND STATE INTERESTS

Senator **Abdnor**. Let me ask you another thing because it comes up: How are the BATF agents and their work different from the interest of State and local authorities, the difference between what the Federal agents do compared to action taken by the local and State authorities? I know they work together.

Senator **Glenn**. They work very closely together. I think in general the Federal agents are much better prepared and much better trained. That would be a general observation, and much more specialized in chemical analysis and things of that nature that can be used for detection of arson, for instance.

This has been such an expanding crime all over the country that we think all these efforts at the Federal level should be expanded instead of contracted at this time. I hope that will be the case.

NATIONAL INCREASE IN ARSON CASES

Senator **Abdnor**. Obviously you have been observing it for several years now. Have you seen a marked improvement each year?

Senator **Glenn**. I wish I could say that arson has gone down but it has not, if anything, it has increased.

I think we need to increase our efforts, increase our efforts at prevention, detection, apprehension, prosecution and so on. I would say when we started our efforts to get arson declared a part I crime, it is hard to believe that a person could torch, let's say, the World Trade Center in New York. A person could torch the World Trade Center in New York and it would not be carried as a part I crime but, if you went down on the street and stole a car and drove it over to New Jersey, that would be carried on the crime statistics. That is preposterous. We know as the crime statistics come out, local efforts, State efforts, Federal efforts follow those crime statistics. They will match their efforts to what the major increases in crimes are. But in the past, arson was not even listed as a part I crime. We have it on the part I crime list now on a temporary basis; I hope we can make it a permanent part I crime so our efforts and our money can match the fastest growing crime in this country.

INVESTIGATION OF ARSON LOSS BY INSURERS

Senator **Abdnor**. Obviously, it has. Insurance policies of holders do go up. Why is it so expensive for insurers themselves to investigate arson loss? Is it impossible for them or are they participating in this?

Senator **Glenn**. They are participating. It is difficult for each insurance company itself to go through setting up their own laboratories and their own extensive training programs, although they have increased that in the last few years. I am sure you have been aware of some of this increase in the ads in magazines about arson and so on. Arson awareness is something that the insurance companies and the National Insurance Institutes have sponsored. So some of that effort I think grew out of the experience in Seattle. In particular, arson awareness and making a community aware of reporting suspicious events seems to be very effective in cutting arson rates back.

AREA OF GREATEST ARSON LOSS

Senator **Abdnor**. I want to ask you, where do most of the arson losses occur?

Are they coming from teenage vandals or are they coming from professional arsonists?

Senator **Glenn**. I don't think there is a good breakdown. I have not seen a good breakdown on the estimates of specifically how much of this comes from professional torching as opposed to people who are disgruntled, ex-renters or whatever. It varies from area to area.

In some of the poorer areas, such as Bedford-Stuyvesant or the South Bronx area in New York, we had testimony a couple of years ago about people torching places just so they can come in after the fire and take the hardware out; tubs and pipes and things like that that could be sold for a few dollars.

We had testimony from disgruntled tenants' who were mad at a previous landlord. We also had testimony about professional rings that would come in and professional groups that would buy up properties, sell them to another member of the group or a different group, all of which were connected, inflate insurance at each time there was an inflated sale, eventually torching either themselves or with professional help and collecting the inflated insurance. That was the pattern. That was one that was particularly interesting. It was similar to the sympathy Road Tenants Association in Boston where there was a pattern of such fires. By watching these transfers of titles and by making a statistical analysis of this, they were able to predict arson and where it would occur and in what area.

So I don't think there is any one breakdown that I have seen that can give what I would consider an accurate estimate on what is professionally done, what is done by vandalism, what is done by ex-renters or groups like that. That might be an interesting study to make.

APPROACH TO ARSON PROBLEMS

Senator **Abdnor**. Our approach to the problems and findings on arson is still on the increase.

Senator **Glenn**. It has quadrupled in the last 10 years and I don't believe the current statistics really show any reduction at all.

Even the original estimates of what is arson and what is not arson are sometimes difficult to make because the evidence goes up with the fires too often. So it is the most difficult crime to detect and apprehend and get convictions on.

Senator **Abdnor**. Senator Glenn, we certainly appreciate your excellent testimony and your comments. We appreciate your interest in the situation, thank you.

Senator **Glenn**. Thank you very much. I appreciate your making room for me in the schedule today when I couldn't be here yesterday. Thank you very much.

Senator **Abdnor**. Thank you.

STATEMENT OF HON. JOHN D. DINGELL, U.S. REPRESENTATIVE FROM MICHIGAN

REORGANIZATION OF BATF

Senator **Abdnor**. I understand Congressman Dingell has arrived. Congressman, good to see you again. Happy to have you here.

Mr. **Dingell**. Senator Abdnor, we miss you on the House side. I am glad to be here if for no other reason than I am able to see you again.

I thank you for inviting me to the hearing. I regret my tardiness and I express my most humble apology to you and the subcommittee for my tardiness.

Mr. Chairman, for the record, I am J. D. Dingell, I am a member of the 16th Congressional District of Michigan. I express to you and to the Members my sincere thanks for the opportunity to be here with you this morning and comment on the reorganization of the Bureau of Alcohol, Tobacco and Firearms.

Mr. Chairman, I am accompanied by my valued staff member, Mr. Walter Sanders, who has worked with me on this statement.

Mr. Chairman, I am deeply appreciative that you would permit my comments on the practices of BATF.

Mr. Chairman, a while back I had the opportunity to say this and I still mean it. "If I were to select a jack-booted group of fascists who are perhaps as large a danger to American society as I could pick today, I would pick BATF. They are a shame and a disgrace to our country."

Mr. Chairman, these are harsh words. My words were expressed in a 1980 television documentary on BATF abuse. I mean them. I mean them today.

ABUSIVE ACTIVITIES OF BATF

They are directed at an agency of the Federal Government which has built an unprecedented history of abusive conduct against the rights of our citizens and against the personal properties of American citizens. They were meant to help expose to the public what has been a massive coverup on the part of the leadership of BATF. And equally they were directed at those individual agents who zealously participated in such abuse of power and law, and in abuse of citizens who were in fact their employees. A fact which is frequently forgotten by the BATF is that the citizens are the masters rather than the bureaucrats of BATF. At the same time, Mr. Chairman, I do feel there are honest and honorable men within the ranks of the Bureau of Alcohol, Tobacco, and Firearms who have served the Government with dignity and integrity; who have taken no part in these spiteful and vengeful instances of abuse in enforcing the Gun Control Act of 1968.

Mr. Chairman, harsh words are occasionally necessary in a great society.

Judging from the reaction of some of the elements of the national media, I would be pictured quite alone in my conclusions over the BATF.

That, however, Mr. Chairman, is not so. A large number of our colleagues know my judgment of BATF has been mirrored through four separate Senate hearings, two of them within the subcommittee of this committee, chaired by our mutual good friend from Arizona, Senator Dennis DeConcini. Following testimony of citizens charging rights violations and abuse at the hands of BATF, Senator DeConcini said he felt the conduct of the agency "bordered on criminality." Indeed, Mr. Chairman, it does.

Former Senator Birch Bayh, who chaired the Senate Judiciary Committee's Subcommittee on the Constitution, came to a similar conclusion following his hearings on BATF civil liberties abuses.

But perhaps the most damning verdict of BATF's enforcement practices appears in a report by Senator Orrin Hatch's Subcommittee on the Constitution, which labels the BATF's firearms law enforcement tactics as "constitutionally, legally and practically reprehensible."

The committee's findings are based on the ample records of Senator DeConcini's hearings and on hearings in the Subcommittee on the Constitution.

ENFORCEMENT OF GUN CONTROL ACT

Again, let me quote from the subcommittee's review of BATF enforcement of the Gun Control Act:

> These practices, amply documented in hearings before this Subcommittee, leave little doubt that the Bureau (of Alcohol, Tobacco and Firearms) has disregarded the rights guaranteed by the Constitution and laws of the United States.

It has trampled upon the Second Amendment by chilling exercise of the right to keep and bear arms by law-abiding citizens.

It has offended the Fourth Amendment by unreasonably searching and seizing the private property.

It has ignored the Fifth Amendment by taking private property without just compensation and by entrapping honest citizens without regard for their right to due process of law.

These are harsh words, harsh conclusions. Yet, they are accurate and sound. And they are based on the careful scrutiny by important and responsible subcommittees of the House and subcommittees of this body.

BATF ABUSES

Mr. Chairman, I will not go into a long litany of specific BATF abuse cases before this committee today. But, I would suggest and hope very strongly, that appropriate portions of Senator DeConcini's hearings, Senator Bayh's hearings, and most recently hearings of the full Judiciary Committee, which contain testimony of citizen witnesses recounting BATF abuse, be included in the record of these proceedings today.

There has been a good deal said about the efforts of the Bureau of Alcohol, Tobacco and Firearms to make administrative "corrections" with respect to the enforcement of the 1968 Gun Control Act. Their record in that particular, Mr. Chairman, is about as good as the record in the protection of civil liberties of American citizens.

Frankly, Mr. Chairman, I do not believe a word of it. And I do not believe that you or anyone else can believe their promise of reform on that rogue agency will be adopted if imposed from without because certainly there appears little disposition to do it either from within BATF or from within the Department of the Treasury.

Mr. Chairman, I will not believe that reform will take place until those Federal employees who are individually responsible for the abusive policies of the agency feel the power of the Federal Government and are brought to bear to the fullest degree of legal responsibility for their highly questionable, probably criminal actions.

Mr. Chairman, I will not believe that the agency intends to reform until those individual agents who have abused the rights of citizens are made fully accountable for their actions and are removed from public service.

Mr. Chairman, the officials of this administration, like officials of every other administration, talk about abuses as being something in the past. They are not. Mr. Chairman, for those thousands of victims of the BATF—for those who have been wrongfully prosecuted under the Gun Control Act or who have lost their savings and livelihood in fighting a series of endless vindicative legal battles brought by BATF—it is not enough to say the "agency has cleaned up its act."

CASE OF PATRICK MULCAHEY

Mr. Chairman, it must be put in the most human of terms. All of this puffery about BATF issuing so-called internal guidelines to control illegal or questionable behavior of its agents enforcing the

Gun Control Act can make little or no difference to people like Patrick Mulcahey. Mr. Mulcahey and his family have endured a nightmare brought on by BATF which has lasted for over 5 years—and it is a nightmare, Mr. Chairman, which shows no signs of ending.

Through its interpretation of the Gun Control Act, BATF has created a crime—"engaged in business without a license," a felony—which has been used to hound or prosecute legitimate gun collectors. Although hundreds of citizens have been charged with this "crime," BATF has yet to define it. In fact, as part of his so-called reforms, the current Director of BATF, Mr. G. R. Dickerson, promised in July 1979 he would propose a definition by regulation. A proposal was proffered in the Federal Register in March 1980, but no definition has ever become part of the regulations. And there is no legal definition today.

Yet, Mr. Mulcahey, a gun collector from Columbia, S.C., was arrested in January 1977, charged with "engaging in the business without a license," for the sale of three firearms to BATF undercover agents posing as respectable citizens.

At the time of his arrest, agents seized his entire collection of over 100 firearms. In Mr. Mulcahey's presence, the agents dropped and damaged many prized items from his collection. This, by the way, Mr. Chairman, is a very common practice on the part of BATF. In making arrests, in seizing property of citizens, to damage it so that its return constitutes only a return of highly damaged property of a pure and unique character.

During his trial on the "engaging in the business" charge, an ATF official from Washington, D.C.—an expert witness—admitted under cross examination that he had, himself, sold, without a license, 70 firearms from his personal collection just after joining the Bureau. Although Mr. Mulcahey was acquitted of all charges, ATF sought forfeiture of his entire collection on the same charges of dealing without a license—without a word of testimony which would convict him of any crime or criminal behavior; as a matter of fact, on the basis of behavior which he was already found to be innocent by a criminal court.

The forfeiture was upheld in the lower court, and appealed. Only last month was it decided in the Fourth U.S. Court of Appeals in Richmond in Mulcahey's favor. Yet, the Government has refused to return his firearms—pending a possible en banc rehearing.

Mr. Mulcahey has been compelled to suffer loss of property, loss of liberty, and has been impoverished by what is clearly a wrongful act of a rogue agency of the Federal Government.

I suggest no one tell Patrick Mulcahey about the wonders of the BATF's internal reforms which apparently do not protect law abiding citizens against the action of a rogue agency.

The past is the present, until some just retribution is brought against those who have twisted the law, and until such time as those who done this are punished, are removed from public service and until clear reforms are laid out on the record which will prevent a continuation of this kind of abuse.

This committee and its counterpart in the House of Representatives are being asked to consider the wisdom of supporting the Reagan administration's proposed dissolution of the BATF—and transfer of its regulatory and law enforcement functions to other agencies within the Department of the Treasury.

TRANSFER OF BATF TO OTHER AGENCIES

Mr. Chairman, that is a little like rearranging the deck chairs on the *Titanic*. You have a rogue agency which has abused the rights of the citizens consistently. We have a situation where the proposal is to transfer that agency then to other agencies of the Federal Government with the assumption that in some fashion this will make everything all right. Quite frankly, I carry no grief for BATF. I think they are evil. I think they have abused the right of citizens and I think they merit richly the disapproval of this Congress and the Federal public service whom they have discredited by their remarkable and extraordinary behavior.

Mr. Chairman, the movement of this agency to other parts of the Federal Government will do little to remove wrongdoers in the agency or to establish a record on the part of that agency in which honorable and honest citizens may impose trust.

As a matter of fact, the transfer of BATF to other agencies affords only the certainty that other agencies will be contaminated by the kind of people and behavior we have seen on the part of BATF.

Mr. Chairman, without an effort to make those accountable whose policies at BATF have brought shame and disrepute on their agency, such transfer will be a sham.

What is needed is not reorganization, but what is needed is just retribution and immediate correction of a long established pattern of wrongdoing by an agency which appears not infrequently to regard itself as above the law.

Any close look at the abuses of the BATF clearly shows that the problem lies not in a faceless agency; but in the actions of Federal employees, who should either be relieved of their positions, or be prosecuted.

Whether those agents are left where they are or moved to another agency, will make little difference for those Americans who are potential victims for future abuse, and certainly the prospect of redress for those already wronged will continue to be only a glimmer on the far horizon.

There is a saying which aptly fits the dilemma faced by this committee. "Mix dirty water with clean water, and you get dirty water."

Mr. Chairman, it fits the BATF itself today, and surely it will fit the U.S. Customs Service or the U.S. Secret Service tomorrow the saying of mixing dirty water with clean water. I see no reason that agencies which have a long history of distinguished and respected public service should be contaminated by this kind of transfer.

Mr. Chairman, therefore, it appears that any way the matter goes, the public loses and the Constitution loses and certainly free men lose by being threatened in their homes, their person and their property by the kind of behavior with which BATF has consistently and, I believe properly, charged.

WITHIN-RANKS HOUSE CLEANING OF BATF

Mr. Chairman, there must be a thorough house cleaning within the ranks of BATF. To do less would be wrong. Certainly to tolerate the kind of wrongdoing which has gone on in BATF is an affront not only to the Nation, the Constitution, but also to the Congress.

Mr. Chairman, we want to have the laws carried out properly. There are laws on the books which I do not fully agree with, one being the 1968 Gun Control Act, which I did everything I could probably to prevent it becoming a law. It is, however, Mr. Chairman—and regrettably you and I take the oath which requires us to see that the law is carried out, but there is nothing in our oath or in the duties or responsibilities or the requirements of law or the Constitution which requires you and I to permit BATF to continue its uncontrolled acts against the rights of free men.

Mr. Chairman, there has been no sign of real internal corrections by its leadership or its people.

MAKE-WORK FUNCTIONS OF GUN CONTROL

Mr. Chairman, I cannot make the point strongly enough that the gun control functions of the BATF, or of any Federal agency for that matter, amount to little more than make work, at best. In many instances, there is room for BATF to redirect its efforts in another fashion, and that is to see to it that they prosecute criminals, pursue criminals, instead of harassing law abiding and honorable men.

Mr. Chairman, I believe that if you can address this matter effectively—and I know, from your distinguished service in the House and knowing of your concerns for the rights of free men, I am satisfied that you will—you will contribute to the comfort of free men and law abiding citizens everywhere to recognize that honorable men and law abiding citizens of the country care about not only the rights of citizens but that agencies which have been afforded vast powers and men who are afforded vast powers will use them wisely and well and humanely in conforming with the Constitution, enforcing the law as vigorously, fairly, and well-thought, not engaging in the kind of outrageous abuses which has consistently been the regular pattern of behavior by BATF.

Thank you.

Senator **ABDNOR**. Thank you, Congressman Dingell.

I know of your expertise and background in this field and we appreciate your coming over.

Today and yesterday we have been holding hearings to pass judgment on the feeling of this subcommittee and the committee, and eventually the Senate, as to whether we feel it is wise to go along with the proposal that has been submitted. So that is principally what we have been doing.

Some of the practices you referred to by ATF, some of that is because of legislation. Do you think the ATF could have administered the law quite differently than they have? What is your general feeling? I have heard many times over the history of the ATF. A number of years ago it was extremely abusive. You have not seen any kind of improvement in their operations over the last few years?

Mr. DINGELL. Mr. Chairman, I have seen none.

I would point out that recently Mr. Dickerson, who is the Director of BATF, promised that there would be no more "strawman" actions without notice. Not too long after persons who were to appear before Senate committees were subjected for a fourth time to "strawman" action by BATF, the BATF was ordered out of the place of business of these people and I would observe to you, Mr. Chairman, that the BATF in its three earlier attempts had failed to achieve a conviction of the people whom I remember, Mr. Paul and Mr. Billy Hays of New Mexico.

Mr. Chairman, that kind of behavior by BATF is not surprising when it says the promises made by the Director that he would stop this kind of behavior has apparently not been honored either by him or by his servants and minions.

KENYAN BALLEW CASE

Mr. Chairman, I became interested in BATF's behavior some while back when they went into a fellow's house out in Maryland, a fellow by the name of Kenyan Ballew, a law-abiding citizen, dressed as hippies with beards and long hair. They pitched Mrs. Ballew into the hall in her underpants, they shot Mr. Ballew in the head, converted him into a cripple with impaired speech, they went out, after they had completed their exercise into the street, put on their BATF armbands, came back and made a report.

I requested an investigation by the Secretary of the Treasury who most diligently covered up the whole matter at the apparent instigation of BATF and the men who did this outrageous and abominable act were promoted at the conclusion of this effort and it was called as a training exercise by BATF.

FRANK CHISMAR CASE

More recently the BATF took an American citizen, Mr. Frank Chismar, driving innocently along Westchester Parkway New Rochelle, N.Y., ran his car out of the road, pulled him out of the car through the window, dragged him across the road by the hair, put him in the BATF car, put a pistol in his eyes and said if he didn't tell them what they wanted to know, they would shoot him. They also beat him. No action was taken by any of these agents, Mr. Chairman.

How are free men to have any security in a society which permits people who are called law enforcement officials to engage in that kind of activity? What I am saying is that the war of BATF against law abiding citizens goes on. Their actions against criminals and wrongdoers are of the required arrest and mere infrequent sorts. They seize guns and do not return them even after the citizen is found innocent. They seize guns and do not return them even after a court order directing them to return them to innocent citizens from whom they are seized.

What I am saying is the abuses here will not be corrected by moving BATF around. BATF must be made to feel the harsh public outrage and appropriate discipline.

Senator **Abdnor**. This last incident was quite recent, wasn't it?

Mr. **Dingell**. These are recent cases. Most of the cases, Mr. Chismar or Mr. Ballew, occurred during this administration, but the action with regard to Mr. and Mrs. Hayes did occur in part in this administration.

Senator **Abdnor**. In the case where they held the gun to the gentlemen's eye, what were they after?

Mr. **Dingell**. I don't have the vaguest idea what they were after. It looks like they were after the law abiding citizen.

Senator **DeConcini**. Mr. Chairman, would you yield?

Senator **Abdnor**. Certainly.

Senator **DeConcini**. If I am not correct, wasn't that the defense of the BATF, that they had the wrong person?

Mr. **Dingell**. Not infrequently is the statement made it was a terrible mistake, but a citizen suffers physical violence, loss of property, breaking into the home, destruction of property and generally massive cost of legal defense and the cost of trying to get his property back.

NRA POSITION ON TRANSFERRING AGENTS

Senator **Abdnor**. Congressman Dingell, I know of few if any who are higher in the echelons of the NRA than you are. Has the NRA taken a position one way or the other on transferring of agents into other departments?

Mr. **Dingell**. Mr. Chairman, I thank you. I am a member of the board of directors of the NRA. I am a shooter and gun collector and a member of NRA since my youth. However, I do not make decisions on immediate NRA policy. I believe the NRA takes no position on this particular matter as to whether or not it ought to be transferred or not. But the NRA would very much like the correction of the kind of abuses to which I have alluded.

Mr. Chairman, I should observe, although I am proud of my membership in the NRA and although I participate actively, I do not appear today as a spokesman for the NRA. I appear only as a private citizen and Member of Congress who has long been troubled by this and troubled by this long before I became a member of the board of directors of the NRA.

Senator **Abdnor**. John, I am sure you know better than I do that the Secret Service does have an elaborate and sophisticated computer capability. Would you be concerned when the BATF files are inserted in the Secret Service computer?

Mr. **Dingell**. I respect the Secret Service and I think every American respects them. They have a long history of carefully considered and honorable enforcement of the law. I wish very much I can say the same thing were true of the BATF; I cannot. And I would think that putting BATF agents who have committed the kind of wrongs about which I have complained, which is long documented and in many more cases than I have laid before you, in charge of the files of the Secret Service or in other agencies in government would simply result in contamination of other honorable citizens and agencies in government by the kind of rogue behavior and kind of rogue agency that I am complaining to you about today.

Senator ABDNOR. It could be a possibility that BATF files, membership lists could be put on the computer, I wouldn't be able to say that but it is a possibility, would that be a great concern to you? You said a moment ago you have a great respect for the Secret Service.

CONTROL OF BATF AGENTS IN SECRET SERVICE

Mr. DINGELL. If you were to fire all of the BATF and move its functions to Secret Service, that might correct the matter. If you move the people from BATF to Secret Service the practical effect would be to contaminate the Secret Service with the kind of undemocratic, un-American approach to law enforcement that we have so long seen in BATF.

I do not believe that agents who could not be controlled by other administrations, and this administration is having enormous difficulty in controlling, will easily be controlled by simply moving it to another agency. I think this administration is really trying to clean up BATF's act. I think they are honorably trying to correct the evils that you, they, and I correctly see as being practiced by BATF.

ARSON PROGRAM

Senator ABDNOR. I realize our exchange has dealt pretty much with gun control. But the BATF has all the other functions in this agency such as the arson program that Senator Glenn was just talking about. He holds the BATF in the highest esteem. Yesterday we had distillers in here and people in the cigarette industry. Actually most of the testimony in that area was extremely good, they spoke very highly of the BATF.

This becomes part of our overall concern because while certainly this is an important area, they all seem to be. After the hearings yesterday, this committee is going to have a difficult decision while we try to correct one here. All these remarks and testimonies regarding the other sections, the great concern they would have, the lack of attention they may receive if they transfer to other areas are of concern.

That is the kind of dilemma we are—right now—trying to search out information and come to a decision.

I am extremely happy that the ranking and extremely valuable minority member of this committee has joined us, Senator DeConcini.

Senator DECONCINI. Thank you very much.

I would ask unanimous consent that a statement be placed in the record at the beginning of this hearing.

Congressman Dingell, I appreciate your continued effort in behalf of the abuse of BATF. I have conducted some hearings in the last Congress and some of these cases were brought forward. I think the more we bring these forward, the more protection of the citizens may come about.

REHABILITATION OF STATE AGENTS

I do want to ask you, realizing your very strong position here, and I concur with so much of it, you don't think there is any saving grace of any of those agents with BATF that could be rehabilitated or used in some proper manner? I doubt whether each and every one of them has broken the law. I suspect there are probably qualified and competent people there. What do we do with those?

Mr. **Dingell**. I think both you and the chairman make essentially the same point, and I commend you for it. I do, to both of you, express sympathy that I feel about you having to make the kind of difficult decisions you are forced to make here. It is going to require the wisdom of Solomon to do this.

First of all, I am not critical about BATF in its alcohol enforcement activities. I do not appear to be critical of that or on the other activities they engage in outside of the question of firearms regulations. And I, like you, recognize that there are honorable men who do not approve of this kind of behavior and who are as ashamed by it as you and I, and I do not believe they should suffer the indiscriminate punishment resulting from the practice of BATF functioning outside the law without the imprimatur of judicial action.

And, so, I don't think that we ought to engage in an action of simply punishing wholesale the people at BATF.

I guess if you were to force upon me the responsibility of advising this committee on what I thought, I would say that I think it would serve little purpose in terms of protecting citizen liberties and disciplining BATF to simply move BATF's gun enforcement activities en masse to the Secret Service or any other agency.

ENFORCE STANDARDS OF CONDUCT FOR BATF AGENTS

I would suspect that given the history of the behavior in which BATF has engaged, BATF would be best kept where it is, given stong leadership and sets of rules to which they are required to comply, and setting out rules which basically outline the proper behavior for law enforcement officers in a free society. Laws can be enforced well without resorting to illegal practices, you know that and I know that and we all know that. Policemen and law enforcement officers elsewhere in the Federal Government engage in the daily enforcement of law in full comformity with the laws and the Constitution that protects the rights of honest and honorable citizens dealing with questions of wiretapping, questions of seizure of property, questions of introduction of evidence.

I would say that the real cure of this matter lies not in moving BATF around—and, by the way, I don't think that moving BATF around is going to save any money—but it lies in quite another area, and that is in laying down standards of conduct in affording the leadership and in imposing responsibilities that will insure that the agency will behave properly.

Senator **DeConcini**. Congressman, I take it that it is your perception that probably can't happen, and given that in your judgment it can't happen, we better abolish it and come up with some other area of regulating the alcoholic laws in this country, the Federal alcoholic laws under the Federal Alcoholic Administration Act. Is that a safe summary?

Mr. DINGELL. I am one who takes a charitable view of sinners and I tend to think that even the worst of them have some good and the capacity to reform.

The point I make on this matter, and I think you are probably—at least as capable and probably more so than I in dealing with this question because you have performed some rather distinguished actions in terms of inquiring into the illegal behavior of BATF for which every American, whether they are a firearms collector or not owes you a sincere thanks.

Again, Senator, I come to the unfortunate judgment that just moving people around isn't going to change their behavior. You see, BATF has a long history of behaving in this fashion without any evidence outside of the agency that there was any discipline or any actions taken to correct the abuses about which citizens complained.

Given that set of circumstances, moving them into another agency will, I think, confirm in the minds of these people they can continue the same pattern of behavior in which they have engaged through the years.

Senator ABDNOR. Would you yield?

Senator DECONCINI. Yes, sir.

CORRECTIVE ACTION BY APPROPRIATIONS COMMITTEE

Senator ABDNOR. Let me ask in that vein, the jurisdiction of this subcommittee and the Committee on Appropriations, do you think there is something we can do to improve this situation?

Mr. DINGELL. Yes. This subcommittee has the power to file a strong report outlining the misbehaviors of the agency. You have the power to require them by next year to come back with a code of standards of conduct by their agencies and by their agents. I would suggest very strongly that you should give thought to that. I would suspect that a nice little cut in personnel and in salary and in other things would send them a message they might understand.

Senator DECONCINI. If the Chairman would yield.

Senator ABDNOR. Yes.

Senator DECONCINI. The problem we get with that, BATF or Treasury tells us: Well, we are not going to enforce the Federal Alcohol Administration Act, and that is the kind of response we get. In other areas they do a good job.

I don't quarrel with your suggestion, but you have been here longer than I have and there is always those answers: If you cut it we are not going to enforce the law. And I get pretty upset about it.

Mr. DINGELL. They are not your master and they are not my master and they are not Congress' master and they are not the citizens' master. They are the servants of the government of the United States and the people of the United States and in your report and in your appropriations bill I think you can write language telling them what they are going to get and how they are going to spend it and how they are going to behave.

Senator DECONCINI. I come down a little bit almost to the stent that you do that we have tried this, we had oversight hearings and slight improvements may have been made but they were temporary, still abuses are going on. If the message isn't clear to the Treasury and BATF of some real concern, and you have been here long before I was here, we will be tilting at windmills trying to get their attention and God bless you for that consistency and that commitment that you made that you finally got their attention, I just don't know how to grab a hold of them and shake them and put them back on the right track.

So your testimony today is really of interest to me because I kind of feel that is what has to be done is something so drastic to start over and then I am left with the real need of enforcement of the Alcoholic Administration Act that I think is very important and if we don't enforce that we are opening the door to organized crime and all kinds of problems. And, as the Chairman said, it is a dilemma. I can only thank you for bringing this clearly to us.

ALCOHOL MATTERS

Mr. DINGELL. I would observe to that, first of all, that alcohol enforcement matters is something that is well within the capacity of this committee to fund and I believe you should fund. I have no evidence to give you of wrongdoing or anything other than honorable service. On most of the other activities of BATF I have no evidence of wrongdoing. I would observe that the Treasury apparently shields and supports BATF in its actions and I would think that the Treasury won't greatly care whether you move BATF personnel en masse from BATF to another agency or not. And I don't suspect even that the top leaders in the Treasury would be terribly troubled if you move BATF's responsibilities to another agency, fire everybody that is there and then give them money to hire new agents. Probably they will run out and hire the BATF agents who have been laid off, good and bad. And the problem with that approach is you will be firing honorable and honest men and good public servants along with knaves and rogues. I would love to put them in jail. I would dearly love it. That is after trial and proper procedures. But I think that is very important. I would dearly love to see to it they would be made subject to personal losses for wrongdoing. That would do an awful lot to make them behave themselves because they will realize they are not immune from the law.

You and I know differently. I have been engaged in this process for a long time. You, Mr. DeConcini, have been engaged in this for quite a while yourself and have done so with great distinction, and we owe you thanks.

Senator DECONCINI. We owe you for continuously, when it was very unpopular to take on the law enforcement, and your background not only goes with the NRA but yourself libertarian background speaks well for you. You are right on target what this is all about. It is a matter of civil liberties that we are talking about and not gun control or any such thing as organizations will print up. It is a matter of American citizens having the rights and freedoms guaranteed under the Constitution and having the Government agency walk over them with impunity.

Mr. **Dingell**. We are a government of laws and of men.

Senator **DeConcini**. Exactly.

I thank you for taking your time today to underscore the need for this committee. I also can't help to thank the Chairman for his willingness to take these on. It is easy to let these things sit and fester for a while and the Chairman is to be commended for his willingness to take on this heavy-duty problem and tackle it in the matter he has.

Thank you, Congressman.

Senator **Abdnor**. Thank you, Congressman Dingell. We do appreciate you taking the time. I know how busy you are over there. Your expertise and your background on this is very helpful. We appreciate your comments.

Mr. **Dingell**. We all owe you a great thanks.

INTRODUCTION OF DEPARTMENTAL WITNESSES

Senator **Abdnor**. Next, we will hear from the Department of Treasury. We have Deputy Secretary of the Treasury, Mr. McNamar and Mr. John M. Walker.

We are pleased to see you here today. We started the hearing yesterday and we had a number of industries testify.

I want to say at the outset, I want Treasury to know that all we are trying to do is make sure we know where we are going when we talk about reorganization. I would like to think we are keeping an open mind on this. I am trying to understand exactly what has transpired with this transfer.

Unfortunately, it has been a while since we talked about this. I think it was in October when we first saw this proposal or read about it and then talked a little about it or had more information on it—we have had very little.

As a matter of fact, gentlemen, yesterday when I read the Washington Post I learned more about the proposals than I had known before. How many numbers would be here and how many numbers we are going to put in the other areas. Hopefully, today we will have a better understanding by the time we conclude the testimony of who will be testifying and giving us the opportunity to ask you some questions about it.

So, we do welcome you to the committee and we hope that you have heard some of the testimony, not only this morning, but yesterday, on some of these problems and where we are going.

Without any further ado, gentlemen.

DEPARTMENT OF THE TREASURY

ENFORCEMENT AND OPERATIONS

STATEMENT OF R. T. McNAMAR, DEPUTY SECRETARY

ACCOMPANIED BY:
  JOHN WALKER, ASSISTANT SECRETARY (ENFORCEMENT AND OPERATIONS)
  ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY (ENFORCEMENT AND OPERATIONS)
  CORA P. BEEBE, ASSISTANT SECRETARY (ADMINISTRATION)

CONTACTING WITNESSES

Senator ABDNOR. Before we commence, I would also like to point out one of the witnessses told this committee yesterday that an official from the Department told him to tone down his testimony. This witness told us it made him uneasy about testifying. If this is true, I could understand it. And I am just wondering if this reorganization is so important to the Treasury that you would even risk the violation of criminal law and show your contempt for the United States by obstruction of our proceedings.

We are just trying to get the facts, and I couldn't imagine anything worse than coming in here to testify and saying something that was not too well accepted by the Treasury and then turn to the Treasury to get your license. So this bothers us yet. I want you to know that before we start out. One of our members of the committee went down the line and asked seven witnesses about this. Some of the people testifying said they did have phone calls, some didn't return the calls, one did, and so this became suddenly a great concern to this committee. You might address that problem too as we discuss the whole situation.

Mr. McNAMAR. I think John Walker has firsthand information on this. John is the Assistant Secretary for Enforcement and Operations.

DEPARTMENTAL POSITION ON CONTACTING WITNESSES

Mr. WALKER. Senator, I was concerned that there was this issue raised yesterday and I would just like to simply make it clear that Treasury in no way attempted to improperly influence any witnesses before this hearing.

First of all, of course, Treasury did not know prior to this hearing what many of these alcohol witnesses would testify to. Some time ago I spoke to committee counsel and asked for a copy of the list of witnesses and he agreed to provide me with a copy. Last Thursday he called and he said he was concerned about Treasury's contacting, in his words, armtwisting of witnesses. And to be absolutely truthful, no arm was twisted.

I told committee counsel that we were not interested in unduly influencing any witnesses but that we would feel free to contact witnesses to—we would feel free to contact them if they had any questions and to provide a briefing if they requested.

I told them I was concerned that the witnesses did not fully understand the plan of reassignment, the witnesses on the list, and the transfer of functions. I told counsel if under the circumstances he did not wish to release the list to me he did not have to do so.

Counsel agreed to furnish the list on the basis that I stated.

To my knowledge only one person on the list was actually contacted by a member of my staff. There were calls made to four others but they were not returned and I repeat there was no attempt to improperly influence anybody.

I am surprised that any witness felt improperly influenced or influenced any way. My experience has been the alcohol industry has not been bashful in opposing Treasury on particular issues and has never felt intimidated. I also know the one witness who testifed on the question, Mr. Norvell, remained opposed to Treasury's position even after the call, which I think is some evidence of the type of call that it was.

I have inquired into the call and I have been told that the call was a simple exchange of views and asking of Mr. Norvell whether or not he had any questions or wanted to be briefed and pointing out to him that his concern which appeared in his statement later on to the effect that what would happen to the FAA Act function was something which was different from the question of reorganization.

We have encouraged in Treasury the free exchange of information back and forth between industry and Government. We surely do not want to interrupt the free flow of discussion between industry and Government on issues of common concern. In fact, a month ago I laid out Treasury's position with regard to this action, the reassignment of functions and the transfer of personnel to a convention of the Distilled Spirits Council of the United States in Phoenix, a session that Senator DeConcini attended at a later time, he wasn't there when I was speaking.

And at that time I wasn't accused of any improper influence nor was Treasury. We simply wanted to make sure that the industry was fully informed to the extent possible of the facts of the proposed transfer of functions so that they could make up their mind and they could be enlightened and present their views in an enlightened manner to the committee. I also made clear my views to other interest groups, the Wine Institute, Brewers Association and so forth.

But I can stress to you that absolutely at no time was there any attempt or effort to improperly or unduly influence any person in the alcohol industry all of whom are available as witnesses and some of whom I gather the Distillers and Wine Institute have not been called and they are available to testify and I admit I have had free and open discussions with all of them concerning these hearings, concerning the issues of common interests that we have.

CONTACTS MADE PRIOR TO PUBLISHING LIST OF WITNESSES

Senator DECONCINI. Would the chairman yield for further questions along that line.

Mr. Walker, what contacts were made prior to the witness list being published for these hearings?

Mr. **Walker**. I went out and spoke to the Distilled Spirits Council of the United States. I was invited to speak there in January—I gave too long a speech to them. This was one of the topics of common interest that was discussed in the speech.

DEPARTMENTAL BRIEFINGS

Senator **Abdnor**. Did you just cover the whole program and how it would operate under the reorganization? Was that generally what you discussed?

Mr. **Walker**. Yes, there have been many questions asked of me and of members of my staff since last fall as we have worked to develop these plans. We briefed many Members of the Congress, we briefed many Members of the Senate who have requested briefings. We have been fully open in discussing our proposals.

Senator **DeConcini**. What would prompt you other than to attempt to let them know of your displeasure of calling someone who was on the witness list a week before or a few days before.

Mr. **Walker**. We had no idea how these people would testify. There is no way we would have displeasure at their position.

Senator **DeConcini**. I don't know about you but as a citizen and as a former law enforcement prosecutor, that is intimidating to have a law enforcement agency that regulates you or might be investigating or something call you up a week before you testify and say, hi, what is going on, what are you going to say. I find that very distasteful. I don't find at all distasteful that you communicate to the Distilled Spirits or Wine Growers, I think that is a proper role, but once that list is out it seems to me if Internal Revenue called me if I was going to testify on something on Internal Revenue all of a sudden I got a call from the agent in charge that might be auditing, I would not feel too comfortable but I would scream, what the hell do you have a right to be calling me 2 or 3 days before, and I think that is what Mr. Norvell was complaining about. I wasn't here yesterday but I have been told about it and I think it is highly improper.

Mr. **Walker**. We differ on that, I guess because in my judgment the free flow of ideas and exchange of ideas and exchange of facts can continue right through the entire legislative process. I don't see that we should close our doors to communications with industry because hearings have begun.

Senator **DeConcini**. I don't either, but should you open your doors and make the contact just a few days before they testify? Wouldn't it have been better to say let's wait until we hear the testimony and then go to them because after their names are published then you contact them. It appears that you are attempting to influence them, whether you were or you were not, and I take your word you were not, but it appears that way at least from the outside, and I think that is one of the problems that Treasury has and often law enforcement has and I won't exempt myself from that either being in law enforcement for many years, but it is a delicate thing not to leave that impression and I think it is very damning.

Mr. **Walker**. I understand what you are saying. I think we have aired this issue and if there are any questions I would be very happy to respond.

Senator **Abdnor**. You in no way suggested they might tone down their presentation?

Mr. **Walker**. Absolutely not.

Senator **DeConcini**. Let me ask one more question.

POSSIBILITY OF PERSONAL AUDITS BY DEPARTMENT

Is it safe to say that any of the witnesses that testified here will not be approved or moved up on any kind of priority list or audits or any type of regulation control you have over them? Is that fair to say?

Mr. **Walker**. Of course, there would be none.

Senator **DeConcini**. I wanted to have that on the record if I could because I think they need to have the satisfaction that you have testified here that any contacts or attempted contacts are not going to effect them in any way whatsoever. That is exactly what I would hope you would say.

Mr. **McNamar**. Senator, It is quite appropriate to raise this question. I did not hear the colloquy yesterday but obviously there could be an appearance question and I appreciate the opportunity that we have had to fully ventilate it. I am struck by the anomaly of the situation when you get to the question about trying to move them up on an enforcement list because this is an example where we are trying to deregulate this industry, have less law enforcement in this, try to free these people from some of the competitive—they have had constraints on their ability to compete, and we will probably be considering legislation in the future where these kinds of things might be fully aired, but it is an example where we are not interested in moving anybody up on a priority list.

Our question is whether taxpayers' money is being adequately spent today and whether the taxpayer is, in fact, not subsidizing some industry activities, corporate welfare, whatever term you want to call it. We do have the anomalous situation in terms of our trying to do less and allow the competitive markets to do more in these industries. So I think the anomaly is somewhat obvious.

Senator **DeConcini**. Mr. McNamar, my concern is that in the testimony given yesterday there was some impression left here that there was perhaps some improprieties on the part of Treasury at least thought of by the witnesses, Mr. Norvell in particular.

I just wanted the record to clearly state that our Government wouldn't participate in any manner whatsoever to adjust whatever regulations may effect him or anyone in the industry who cared to express a view and I think that Mr. Walker's testimony said that in the record and I wasn't making a record of your regulation reorganization.

Senator **Abdnor**. Thank you, we better get on with the testimony so we can ask some questions.

INTRODUCTORY REMARKS OF DEPUTY SECRETARY MCNAMAR

Mr. **McNamar**. Thank you, Mr. Chairman, we do appreciate this opportunity to meet with the subcommittee and to discuss the plans which the administration has to reassign the functions of the Bureau of Alcohol, Tobacco, and Firearms (BATF) to the U.S. Secret Service and to the U.S. Customs Service and to discuss the budgetary requirements to carry out this reassignment. With me today are Assistant Secretary for Enforcement and Operations, John M. Walker, Jr.; his deputy for Enforcement, Robert E. Powis; and Assistant Secretary for Administration, Cora P. Beebe.

It is the administration's proposal to reassign the functions of alcohol and tobacco regulation, revenue protection and enforcement to the U.S. Customs Service and the functions of firearms and explosives enforcement and regulation to the U.S. Secret Service. We seek your support on this transfer.

I have to say after having heard two witnesses this morning, I am sure by the time we have finished we will have your support.

This proposal for reassignment of functions is based on sound management decisions which will cut costs, lead to greater efficiency and produce solid law enforcement benefits. It is our intention by this reorganization to strengthen the criminal law enforcement functions now being performed by ATF. I firmly believe that the reassignment of duties to the Secret Service will result in the more efficient enforcement of the firearms, explosives and arson statutes. It is our intention to fully carry out these important law enforcement duties.

TRANSFER OF FIREARMS AND EXPLOSIVES WORK

The firearms and explosives work at ATF will be performed by approximately 1,200 experienced special agents who will be transferred from ATF to the Secret Service. The criminal investigation personnel of the Secret Service will also be available for this important work. I wish to assure the Committee that the arson program, which is an outgrowth of the explosives statutes, will be maintained and carried out in an effective manner. ATF's four arson National Response Teams, which have been widely acclaimed for their expertise in determining the cause and origin of fires, will be reassigned to the Secret Service intact.

Indeed having heard Senator Glenn's testimony I have no question that in each and every issue he raised each and every concern he expressed will be met, no question whatsoever.

Senator **Abdnor**. Let's stop there a second. Does that mean personnel would be much the same?

Mr. **McNamar**. The identical number of personnel, yes, sir, for fiscal years 1981, 1982 and 1983, the exact identical number of personnel with no diminution whatsoever, no detriment. You have our assurance on that. I think that fully satisfies Senator Glenn's concern.

Senator **Abdnor**. Thank you.

Mr. **McNamar**. The targeting and investigation of hate groups, terrorists, outlaw motorcycle gangs, and narcotics traffickers who illegally deal in firearms and explosives will continue.

ADVANTAGES OF SECRET SERVICE MERGER

The merger with the Secret Service will be accompanied by a number of administrative actions which will result in greater productivity and a greater concentration on the criminal misuse of firearms and explosives and I emphasize the criminal misuse.

Among these are the following: (1) the closure of a number of nonproductive Posts of Duty offices; (2) the phasing out of the regional management structure in criminal enforcement; (3) placing the tracing function under the supervision of criminal enforcement; and (4) transferring the regulatory compliance functions to criminal enforcement.

In addition to the enhancement of firearms enforcement, there would also be significant law enforcement benefits which will accrue to the Secret Service. The most important of these is the fact that the service will have more resources available for its protective mission. This need was recognized in the Management Review performed by the Treasury Department following the assassination attempt on President Reagan on March 30, 1981.

COST REDUCTIONS RESULTING FROM TRANSFER OF ATF FUNCTIONS

There will be significant cost reductions realized by the reassignment of ATF functions. By cutting administrative and management overhead and commingling resources in these areas presently in ATF with those in the receiving bureaus. There will also be significant cost reductions realized from shared space, equipment and laboratory facilities.

Another significant part of the proposal is the transfer to the Customs Service of the excise tax and the regulatory functions of ATF which pertain to alcohol and tobacco. Both agencies now collect substantial revenues, maintain laboratories for testing commodities, utilize all-in-bond procedures and have significant regulatory responsibilities. Customs already possesses significant expertise in the assessment of taxes on alcoholic beverages gained through its responsibilities and have calculated these taxes on imported wines and liquors and enforcement of labeling and other restrictions.

In combining the collection of import duties with excise tax collection, Customs will follow the practice of many, I believe most, Western nations. The addition of these duties will not adversely affect Customs border management activities.

The reassignment which has been described requires a minimum of $138 million for fiscal year 1982. The Continuing Resolution, however, provides $115.7 million for the Bureau. If that figure is not raised we would have to abandon reorganization plans and may have to RIF up to 1,100 special agents. The actual number RIFed, of course, will depend on the months left for savings in the fiscal year as well as the magnitude of separation costs.

FISCAL 1982 BUDGET REQUEST

There is some time urgency in getting a decision from the committee. Extensive furloughs may be necessary instead of some RIFs if separation costs are too high. The present budget for fiscal year 1982 includes a supplemental request of $22.3 million. In addition, we requested the Congress to remove the requirement in the continuing resolution that $15 million be earmarked in fiscal year 1982 exclusively to administer the Federal Alcohol Act. If this requirement is continued we will have to increase our planned staffing from 100 to 400 positions for that activity.

The proposal to reassign ATF functions to other bureaus was based on the fact that the functions of alcohol and tobacco have no commonality of interest or purpose with the criminal enforcement functions of firearms, explosives and arson. There are no identifiable reasons for these diverse functions to be performed in a single agency. I would stress no identifiable reasons for these diverse functions to be performed in a single agency.

This fact has been previously recognized within the Department. The diversity of functions has led to an inefficient organizational structure and to an unhealthy competition for resources between criminal enforcement activities and revenue protection and regulation in a declining budget picture.

Now is the time to make the break and to place the functions into bureaus more compatible with these responsibilities. Cost savings will be realized and law enforcement activity will be strengthened. The administration urges the support of this conmittee for the funding level which we need and the approval of our plan to reassign functions and personnel.

Mr. Chairman, at this time I want to have John Walker present a prepared statement as well.

Senator ABDNOR. Mr. Secretary, before we go on, I would like to say one thing. This is the kind of thing we welcome. I would have liked very much to have had this in my hands last night. I could have read it because I have a million questions in my mind I would like to ask. Mr. Walker did bring his testimony in but I had other things I had to attend to last night. But it seems to me that as long as this has been hanging in the balance and knowing we were going to do this, we could have had this before now.

I want to say that we may have a lot of questions to submit to you in writing because of it. I would have liked very much to be able to put thoughts together as well as questions that come to mind. The testimony we received yesterday, I am sure we could have addressed lots of those concerns if we had time to do it justice.

In my other committees we demand that testimony be presented to us at least the day before for that very purpose. I guess we have never set down those rules in this committee, but I assure you in the future we are going to or we will call off the hearing. I think that it is very, very important for the members to have an opportunity to review the testimony so we can maybe get the desired questions answered that are in our minds. We will see how it works out.

Mr. McNAMAR. Mr. Chairman, I think that is a very good point. I was unaware you did not have the testimony so I apologize for that.

Senator ABDNOR. I think we called down and said you were putting it together because I asked for it.

Mr. McNAMAR. I am sorry, I did not answer to that. I do apologize for that, if we were dilatory in any way in getting it out. As you know we have requested a number of times to come down and brief you and/or the committee counsel on this matter and we would like to continue whatever dialog is appropriate. Indeed we feel, I think, somewhat frustrated at our inability to convey the details of this reorganization plan which has such tremendous bipartisan support.

CARTER ADMINISTRATION REPORT

There is absolutely no question and I would ask your permission to submit for the record the report that the Carter administration did when they came into office recommending a reorganization of BATF and I think it meets a number of the concerns that were raised by Senator DeConcini, by Senator Glenn, by Congressman Dingle. This is something that has wide, wide support and I share your frustrations at our inability to communicate.

[The report follows:]

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: SEP 8 1977
FILE: MAN-3-01

TO : Bette B. Anderson
Under Secretary of the Treasury

FROM : Commissioner of Customs

SUBJECT: Feasibility of Transferring Certain Functions of the Bureau of Alcohol, Tobacco and Firearms (BATF) to the Customs Service

Pursuant to your oral request, a Committee was formed to make a study to determine those functions of BATF which should be transferred to the Customs Service and the advantages to the government that would be realized.

Because of the sensitive nature of this study, we made exhaustive use of the BATF regulations (Title 27 CFR), the statutes, organizational charts and mission statements, previous internal study reports made available by Treasury, budget submissions to Congress, and other printed data available generally. We also drew extensively on the experience and knowledge of Customs officers - Headquarters and field - who either work closely in the resolution of joint Customs-BATF problems or who have previously been employed by BATF.

THE STUDY APPROACH

BATF categorizes its functions both organizationally and operationally as: (1) regulatory enforcement; and, (2) criminal enforcement. Prior to 1976, each of the seven BATF regions was headed by a regional director who had line authority over both regulatory and criminal enforcement units. In 1976, the positions of regional director and assistant regional director were abolished. The criminal enforcement field units were brought directly under the supervision of the National Headquarters. The regulatory enforcement functions remain decentralized at the regional level under a regional regulatory administrator.

The dichotomy continues to the lowest operational level at the distillery, arms dealer, or tobacco plant. The regulatory arm handles licensing and auditing of records and physical supervision of manufacturing operations for compliance purposes. The enforcement arm limits its activities to investigation of known or suspected violators of law. The major portion of the resources of the criminal enforcement arm are devoted to the firearms and explosives area.

Because BATF has historically divided its operations and organizational structure along regulatory enforcement and criminal enforcement lines, we studied the functions carefully from this standpoint in order to determine whether the regulatory enforcement functions might be placed in one agency with the criminal enforcement functions in another.

Insofar as alcohol and tobacco are concerned, such a division of responsibility might be feasible since the main thrust of the Federal activity in these areas is regulatory rather than criminal enforcement. On the other hand, the regulatory and criminal enforcement elements of the firearms function are so integrally related and of such high public profile, that any attempt at separation would be undesirable.

Although BATF has experimented with several organizational structures, at present, the regulatory enforcement units deal directly with arms manufacturers, distributors, and dealers in the licensing and auditing of records. A staff of investigators - series GS-1810 - are employed for this purpose. The criminal enforcement arm employs criminal investigators - series GS-1811 - to deal with the same businesses and individuals. A separation of those functions into different agencies would result in jurisdictional overlap and dispute; create considerable confusion in the minds of the regulated public; and seriously impede the ability of the national government to establish policy direction.

We have, therefore, concluded that any transfer of functions between BATF and other agencies should be done along subject matter, rather than regulatory vs. criminal enforcement lines.

The three functions administered by BATF, i.e., alcohol, tobacco, and firearms, are founded on separate and distinct statutory authority. The industries, businessmen, and individuals regulated share no common interests in the areas being regulated. There are no identifiable compelling reasons for consolidation of the functions in a single agency. Accordingly, in our opinion, each of the functions can be viewed separately for purposes of an organizational placement study.

For purposes of our analysis, we have categorized the functions of BATF into four subject matter areas. They are:

- The alcohol function.
- The tobacco function.
- The firearms, weapons, and explosives function.
- The administrative, technical, and foreign investigations support functions.

THE ALCOHOL FUNCTION

The alcohol function of BATF includes a significant revenue collection function, approximately $5.5 billion per year, and very detailed regulation of the industry. The producer/distributor and retailer are closely regulated to ensure compliance not only with the revenue laws, but also to ensure compliance with Federal quality and labeling standards and laws prohibiting financial relationships and concessions between the various production and distribution levels. Regulation includes licensing of producers and distributors. There are increasing pressures to require beverage labels to list those ingredients which may have a harmful effect on the health of the consumer; also to establish labeling standards for wines designed to ensure that wines labeled as a particular kind or type are in fact of that kind or type.

Because of the provisions of the 21st amendment to the U.S. Constitution, the Federal regulation must be done in a manner that is consonant with and does not usurp state laws.

The regulation of the alcoholic beverage industry includes: (1) physical supervision over production facilities and operations; (2) licensing of producers and distributors with attendant license suspension or revocation sanctions; (3) control and security of alcoholic beverage products until the tax is paid or the product is exported; and, (4) on-site audits of books and records. The regulatory function has been substantially delegated to the regional level and is performed under the supervision of a regional regulatory administrator.

RECOMMENDATION

We have concluded that the alcohol functions described above are substantially similar to functions presently performed by the Customs Service, and could, in the main, be performed by an expanded Customs and Excise Service without disruption of Customs border management activities and with savings to the taxpayer through elimination of duplicative support functions and administrative management. Some of the significant similarities and reasons which support this conclusion are as follows:

1. The taxes on alcoholic beverages are, in effect, commodity taxes which do not differ in any substantive way from specific rate duties assessed on imported commodities. The resource expertise and management disciplines necessary to collect Customs duties on importation are substantially similar to the expertise and disciplines required to collect taxes on alcoholic beverages.

2. Imported merchandise is retained in Customs custody and controlled by a system of bonds, seals, warehouses, and physical supervision at all times from importation to release into consumption. Alcoholic beverages are controlled by a similar system of physical and bond security until released into the commerce of the United States or exported with benefit of drawback.

3. BATF supervises manufacturing operations to control the use of taxable alcohol in nontaxable products with benefit of drawback or tax exemption. Customs likewise supervises manufacturing operations to control the use of imported materials in products to be exported with benefit of drawback. Both agencies employ similar audit and inspection disciplines for this purpose.

4. Customs already possesses significant expertise in the assessment of taxes on alcoholic beverages gained through its responsibilities for calculating these taxes on imported wines and liquors and enforcement of labeling and other restrictions.

5. Although the transfer of the alcohol function to Customs would require extensive involvement in "domestic" activities, there is ample precedent for doing so in many western nations. Canada, France, and Germany all combine customs and excise in a single agency.

6. Customs has 10 field and 1 Headquarters laboratories geographically dispersed which are already engaged in alcohol analysis.

7. The "moonshine" functions, although relatively insignificant at present, employ commodity revenue laws as an enforcement technique. The investigative techniques employed to combat this activity are quite similar to the investigative techniques employed to interdict clandestine smuggling at isolated border locations.

Other current BATF alcohol functions which relate to labeling, quality control, and financial relationships between manufacturers, distributors, and retailers could also be performed under a Customs management structure without disruption of other mission priorities. However, we recommend an effort be made to divest the Treasury Department of responsibility for administration of statutes which relate to these subject-matter areas. These functions would appear to be more properly placed in Food and Drug Administration, Federal Trade Commission, and/or the Antitrust Division of the Department of Justice.

THE TOBACCO FUNCTION

The tobacco function is primarily related to the assessment and collection of taxes on manufactured tobacco products generating $2.5 billion in revenue per year. Unlike the alcohol and firearms functions, there is little industry regulation in tobacco except for that necessary to assess and collect the tax.

RECOMMENDATION

This function could be transferred to Customs with minimal upheaval and dysfunction. Some of the reasons which support this conclusion are as follows:

1. Most cigars and cigarettes manufactured in the United States are produced in whole or in part from imported tobacco, which is stored in Customs bonded warehouses on the manufacturer's premises. Customs personnel are stationed in these warehouses and already have some familiarity with the manufacture of tobacco products.

2. The tax on cigarettes is based on the intended retail price and quantity produced or imported. This tax base is relatively simple to control and administer, and elaborate production controls are not necessary for tax assessment and determination purposes.

3. There is very little bootleg production of cigars and cigarettes which would present enforcement problems to Customs. Federal taxes are not excessively high, and the manufacture of cigarettes is highly capital-intensive which limits the entry of illicit manufacturers into the trade.

4. There are relatively few nontax-related statutes connected with tobacco products that BATF must enforce.

THE FIREARMS FUNCTION

A. Domestic Firearms Control and Regulation

Most aspects related to the manufacture, distribution, sale, and possession of firearms, destructive devices and explosives are extensively regulated and controlled by BATF. The significant statutes which mandate and authorize regulation are the Gun Control Act of 1968; the Omnibus Crime Control and Safe Streets Act of 1968; and the Explosives Control Act.

The revenue aspects of the firearms statutes are minimal being limited to a transfer tax on certain weapons and license fees. The impact on U.S. residents and businesses is significant. Manufacturers, wholesale dealers, retail merchants, and individual purchasers are closely regulated through a comprehensive system of registrations, licenses and permits. Elaborate records of sale and transfer of arms and ammunition are required to be maintained by importers, manufacturers, wholesalers, and dealers. Certain provisions of the statutes are waivable by BATF, i.e., restrictions against possession of weapons by a convicted felon. This waiver authority results in a large volume of relief petitions from individual citizens which must be investigated and decided.

License revocation or suspension is an extensively used enforcement sanction and results in a substantial administrative hearing procedure.

Adequate enforcement of the firearms and explosive laws results in BATF enforcement officers being extensively involved in what would otherwise be local criminal investigations. BATF is able to assist local police in crime solution through their ability to trace ownership of weapons and explosives. A tracing of ownership often results in discovery of a violation of Federal control statutes which BATF may then prosecute as a Federal violation.

A program of Concentrated Urban Enforcement (CUE) has been implemented in several large cities. The Program was designed to involve BATF with local police in a significant way. Although the most recent BATF appropriation restricts the use of appropriated funds for the expansion of CUE until further study, the Program exemplifies the extent to which the Federal firearms programs involve BATF in otherwise local matters.

The Federal firearms laws must be administered in a climate which includes broad public interest and highly organized and vocal special interest groups. Every significant action of BATF is closely scrutinized by those who would outlaw firearms and those who would not, with resultant public controversy.

We can identify little justification for the organizational placement of the domestic elements of the firearms function within the Treasury Department, except for the fact that Congress has so prescribed. There is little or no relationship between firearms control and revenue and monetary matters. Federal firearms statutes are motivated primarily by the strong public desire to reduce crime in the streets.

Congress has chosen to found the regulatory scheme on the "commerce clause" rather than the taxing powers of the Constitution. Therefore, the responsibility for administration should more appropriately be placed in an agency with more orientation toward regulation of interstate commerce and investigation of local crime.

B. Importation and Exportation of Firearms

Although the domestic firearms functions seem organizationally misplaced in Treasury, the functions related to importation and exportation of arms, ammunition, and explosives do bear a direct relation to functions of the Customs Service.

BATF export functions are limited in scope since the major policy agency is the Office of Munitions Control (OMC) in the Department of State. OMC determines as a matter of national policy which arms and munitions are exportable and under what conditions. Enforcement of the Munitions Control List and regulations is a primary responsibility of Customs at present.

BATF is presently charged with the responsibility of control over the importation of firearms, ammunition, and explosives. However, major policy decisions appear to have been deferred to OMC. The Director, BATF, has adapted the Munitions Control List as the Munitions Import List and republished it substantially intact in the BATF regulations (27 CFR 47).

BATF presently licenses and/or permits both firearms importers and imported articles. Customs retains the imported articles in Customs custody until an appropriate license or other authorization is received from BATF. The BATF import and export control functions are severable from their domestic firearms control functions and should more appropriately be placed in a border management agency.

ADMINISTRATIVE, TECHNICAL, AND FOREIGN INVESTIGATIVE SUPPORT FUNCTIONS

We have identified four administrative, technical, and investigative functions which are performed in a greater or less degree by both Customs and BATF. The functions are similar in nature and could be consolidated with significant savings in manpower and resources. The functions are:

- Laboratory analysis.
- Automatic Data Processing Services.
- Foreign investigations.
- Administrative processing of seizures and forfeitures.

Each function and our recommendations are discussed in detail below.

A. Recommendation: All functions performed by the five BATF laboratories be transferred to Customs.

The BATF maintains laboratory facilities in Washington, Philadelphia, Cincinnati, Atlanta, and San Francisco, staffed with a total of 111 technical and nontechnical personnel. The number of personnel in each laboratory varies from 5 in San Francisco to 56 in Washington. Regulatory enforcement activities of the BATF laboratories include the analysis of alcoholic beverages (legally and illegally produced), alcoholic foods, flavors, medicines, and toilet preparations, and tobacco products. The BATF laboratories also provide support for criminal enforcement in the areas of firearms examination, document examination, fingerprint examination, voice-print analysis, gunshot and explosive residue analysis, etc.

The U.S. Customs Service maintains laboratory facilities in Washington, Baltimore, Boston, Chicago, Los Angeles, New Orleans, New York, San Antonio, San Francisco, Savannah, and San Juan. The staff of the Technical Services Division at Headquarters and the 10 field laboratories, totals 183 technical and nontechnical personnel. The number of personnel in each laboratory varies from 4 in San Antonio to 51 in New York. The primary mission of the Customs laboratories is to examine and/or analyze samples of most of the types of commodities imported into the United States for the purpose of establishing their proper classification for tariff purposes. Commodities analyzed by Customs laboratories include edible products, alcoholic beverages, wood and paper products, textiles and fibers, organic and inorganic chemicals, minerals, metals, footwear, prohibited drugs and seizures, and a variety of miscellaneous products. Samples analyzed by Customs laboratories include all the types of products analyzed by BATF laboratories. Customs laboratories provide or currently have the capacity to provide support for enforcement activities similar to those listed for the BATF laboratories; the only exception being voice-print analysis.

Experience has shown the importance of laboratory proximity to the field personnel for whom analytical functions are being performed. (The abolishment of Customs laboratories in Philadelphia and Honolulu in the 1960's was accompanied by a sharp reduction in samples from those areas, and the closing down of the BATF San Francisco laboratory led to a reduction of samples from the West Coast, requiring a reopening of the laboratory.) However, the operation of modern laboratories is expensive, and due to limited resources, the number of Treasury laboratories and the staffing of the laboratories must be limited.

The Customs laboratory system has the capability of performing the functions of the BATF laboratories without the acquisition of significant new or different technical skills or laboratory instrumentation. Services now provided by BATF laboratories in four locations could easily be expanded to seven locations using existing Customs laboratory facilities. To accomplish the functions of the BATF laboratories, 41 positions would be required (an average of 4 per Customs region plus 5 in Washington). This would result in a savings of 70 positions to the U.S. Government. In addition, laboratory instrumentation existing in BATF laboratories could be transferred to Customs laboratories or other Government agencies, producing substantial additional savings.

B. Recommendation: That Customs be charged with responsibility for providing all enforcement related ADP services to BATF.

BATF currently has no automatic data processing hardware and only a small programming and planning staff in Washington. The extensive Customs enforcement ADP capabilities are already being made available to BATF to a considerable extent.

Customs currently maintains several active data bases for the BATF. These include an "Authenticator/Locator" file which is a data bank of their personnel including pertinent identifying data and present addresses; an investigative index restricted to BATF terminals and users only; TECS lookouts through which BATF both share their own information systemswide and have available to them information developed by other TECS User Agencies; and, lastly, interface with the California Law Enforcement Telecommunication System (CLETS) for gun registration information. To provide these services, Customs provides ATF with 59 terminals and maintains an ATF data base of 185, 619 records.

BATF has indicated a need for additional ADP services. Among these are a gun tracer system which would enable BATF to trace a weapon by serial number from its present owner through each previous owner and ultimately back to the manufacturer. At the present time, BATF is attempting to do this manually.

The CLETS interface provides BATF with gun registration information in California. Other states have this same type of information available in an automated data base; and BATF has indicated that they would like to have a similar interface through TECS with all of these other states, especially Texas.

A third group of enforcement systems that BATF has expressed an interest in are enforcement management systems similar to the exclusively Customs systems, IPA and CLEAR. An IPA-CLEAR type system could enable them to measure the results of investigative effort and to manage their personnel in a manner similar to that now done by the Customs Office of Investigations.

It is our recommendation that Customs be tasked with the responsibility of continuing to provide enforcement related ADP services to BATF, thereby eliminating the need to develop and install a costly and somewhat duplicative system in BATF.

C. Recommendation: That Customs be charged with responsibility for performing all foreign investigations for BATF.

Officers of the Customs Service are authorized to serve in foreign countries pursuant to Section 6 of Title 19 of the United States Code. At the present time, Customs maintains 10 foreign offices located in nine countries throughout the world. The duties performed by Customs Attaches and representatives are related to specific Customs interest, such as dumping, countervailing duties, foreign values, and investigations of fraudulent import and export practices. In addition to these activities, Customs is involved in the suppression of smuggling activities in all commodities having the U.S. as a final destination in addition to the illegal movement of exports from the U.S. to foreign countries. In pursuit of these investigative duties, Customs representatives frequently act as fact finders for the Department of Commerce (illegal exports), Secret Service (counterfeit money), Drug Enforcement Administration (narcotics intelligence), the Bureau of Alcohol, Tobacco and Firearms (gun control violations), and the Department of State (arms export violations).

In the event arms and munitions are seized in a foreign country (as in Mexico), the U.S. Customs Service, cooperating with the concerned foreign government officials, attempts to obtain the necessary information which would allow us to trace weapon(s) back to the point of sale in the U.S. With this information, we are then able to discover the manner or method used in, and the persons responsible for, the violations of law.

Recently (1974), an arms investigative overlap of interests has developed between the BATF and the Customs Service. Efforts have been made by BATF to place representatives in foreign offices to pursue GCA violations specifically in the U.K. for IRA gun violations and in Mexico for transborder traffic. Since the Customs Service has representatives located in both of these countries, actively pursuing violations of arms export control regulations, there is no justification for an additional Treasury agency to involve itself in a narrow gun traffic violation area, especially when the discovery and seizure of weapons by foreign officials is rarely other than an arms export violation falling within the investigative jurisdiction of the U.S. Customs Service.

We conclude that Customs officers in foreign locations already possess the expertise necessary to adequately perform BATF investigations, and the additional presence of another Treasury agency would be duplicative of investigative resources already in place. Accordingly, we recommend that Customs be charged with responsibility for performing all foreign investigations for BATF.

D. Recommendation: That responsibility for administrative processing including mitigation and remission authority of all BATF seizures be transferred to Customs.

Various provisions of statutes enforced by the BATF provide for the seizure and forfeiture of merchandise and conveyances. For example, wines, beers, distilled spirits, and related apparatus are liable to seizure and forfeiture for violation of pertinent sections of the Internal Revenue Code regulating production, distribution, and collection of excise taxes.

Remission or mitigation of forfeitures incurred under laws enforced by BATF is generally based on Customs laws. All authority to remit or mitigate BATF forfeitures is centralized in Washington. The field staff is limited to administrative processing and effecting forfeiture action.

Customs maintains a forfeiture administration capability at its more than 40 district offices. Customs district directors also have authority to act on all petitions for seizures valued at less than $25,000. An appellate procedure exists.

There is ample precedent for processing seizures of other agencies through Customs. For example, Secret Service seizures and seizures under the export control laws have been handled by Customs for years without significant problems. Also, the public is better served by having the final decision made by the more accessible local office.

In order to eliminate unnecessary parallel activities, and to take advantage of Customs existing structure and expertise, it is recommended that, with the exception of investigating the claims made in a petition for relief, all functions performed by BATF relating to the remission and mitigation of forfeitures be transferred to the Customs Service.

SUMMARY OF RECOMMENDATIONS

1. The alcohol functions of BATF should be transferred to the U.S. Customs Service, and further study begun to divest the Treasury Department of responsibility for those alcohol functions which relate to quality control, labeling, and beverage industry regulation.

2. The tobacco functions of BATF should be transferred to Customs.

3. Responsibility for administration of the laws and regulations relating to the importation or exportation of firearms, now performed by BATF, be transferred to Customs.

4. Responsibility for domestic regulation and control of firearms and explosives should be studied for eventual transfer to another Federal agency.

   Also, we recommend that Customs assume the responsibility for the following ATF administrative, technical, and investigative functions whether or not any or all of the above recommendations are implemented.

5. All functions performed by BATF laboratories be transferred to Customs.

6. That Customs be charged with responsibility for providing all enforcement related ADP services to BATF.

7. That Customs be charged with responsibility for performing all foreign investigations for BATF.

8. That responsibility for administrative processing, including mitigation and remission authority, of all BATF seizures be tranferred to Customs.

OPTIONS

The purpose of this section is to set forth three broad options for integrating current ATF functions into Customs. Any of these three options would permit implementation of some of the recommendations. Total implementation of the recommendations would be possible only under Option 2.

Option 1: Continue BATF substantially as presently organized and tasked.

This option would include further study looking towards the placing of all or part of the BATF functions in another agency or agencies. Further action would be deferred until OMB could mount a separate study or complete the ongoing Federal Law Enforcement Study. It would not preclude immediate implementation of the recommended consolidations of administrative, technical, and investigative support services. (Recommendations 5, 6, 7, 8.)

Option 2: Transfer the alcohol, tobacco, and importation and exportation of firearms functions to Customs; retain the domestic firearms functions in the Treasury Department.

This option would clearly sever the commodity revenue functions of alcohol and tobacco from the unrelated domestic firearms function. It would permit organization of a Federal Firearms and Explosives Service whose organizational placement in another Federal Agency could be studied by the ongoing, Federal Law Enforcement Study.

Option 3: Transfer all BATF functions to Customs

This option would permit an immediate reduction in the number of Treasury agencies. It would not preclude further recommendations for organizational placement of the domestic firearms function by the Federal Law Enforcement Study group.

Customs recommends that Option 2 be adopted. Through implementation of this option, an immediate saving would be realized through consolidation of these administrative, technical, and investigative support functions not required to support the domestic firearms function. The domestic firearms function could be reorganized as a Federal Firearms and Explosives Service around the present BATF management structure. Inconsistent competing objectives of revenue collection and firearms regulation would be reduced. The management structure of the firearms agency could concentrate solely on firearms control objectives. The firearms function would be clearly isolated in a simple organizational unit thereby facilitating transfer to another department if subsequent studies so recommend.

Probable Organizational Configuration

Taking all of the above factors into consideration, we have endeavored to postulate an organizational configuration which would facilitate the integration of ATF functions into the organization of the Customs Service. In designing the organization, we made the assumption that Option 3 above would be the option ultimately selected. While we prefer Option 2, we found it more effective to plan for integrating all functions and then, if fewer functions are actually transferred to Customs, to scale down the organization. In this way we are, in effect, prepared for any eventuality.

In developing the optimum organizational configuration, we considered moving the current ATF organization (intact) permanently into the U.S. Customs Service. We rejected this alternative, however, because it failed to take advantage of a number of expected benefits of integration including a reduction in resources devoted to the management structure, a consolidation of administrative services, and an integration of similar Customs/ATF functions. We also considered a second option that represents the other extreme, whereby there would be a total absorption of all ATF functions into the existing U.S. Customs organization. Those functions associated most closely with our inspection and control function could simply be absorbed by that division, those associated with our regulatory audit function would be so absorbed, etc. We rejected this alternative, however, because we were not prepared to make the assumption that all ATF functions were in fact so related as to provide operational efficiency and organizational cohesiveness. As we have pointed out above, there are a number of similarities and overlaps between Customs and ATF functions that appear to justify consolidation. However, too radical an integration might lead to ineffective program direction and supervision of a number of alcohol, tobacco, and firearms functions. Therefore, we have chosen a two-phased approach for transferring ATF substantially intact to the Customs Service and then designing an organizational configuration that integrates many of the functions but retains a program direction capability for those functions which appear to require special attention. It should be stressed that the organizational configuration that we envision attempts to effectively group those functions related to domestic firearms control in such a manner that they can be effectively managed and if further study indicates, be transferred with minimal disruption to another Federal department.

Phase 1 of our organizational plan consists of the following:

A Establish at the Headquarters level an Assistant Commissioner for Alcohol, Tobacco, and Firearms (AC/ATF) to provide program direction and line supervision to the ATF functions Servicewide.

All of the organizational configurations now making up ATF would be transferred to the Office headed by this Assistant Commissioner. The position of Director of the Bureau of Alcohol, Tobacco, and Firearms corresponds to this position.

B Establish in each Customs region an Assistant Regional Commissioner for ATF reporting to the Customs Regional Commissioner. This position would correspond to the ATF position of Regional Regulatory Administrator and would provide field program direction of regional regulatory matters dealing with alcohol, tobacco, and firearms.

C Immediately integrate selected administrated services in the area of payroll, logistics, and financial management.

D Establish at the Headquarters level a Customs and ATF task force to address in detail problems of organizational integration and to prepare an effective implementation plan.

Phase 2, which calls for a more thorough integration of ATF and Customs structure and functions in a Customs and Excise Service, would be heavily influenced by the study efforts of this consolidation task force. However, at this point in our thinking, we envision in phase 2 the abolishing of the phase 1 structure and the establishing of a configuration characterized by the following:

A The position of Assistant Commissioner, Domestic Firearms and Explosives (AC/DFE) would be established to handle both regulatory and investigative matters dealing with domestic firearms and explosives control, i.e., those regulatory and investigative matters dealing with domestic gun control, firearms licensing, control of explosives, etc. This group of functions is being kept separate, pending the results of further in-depth study. Customs is primarily a border-oriented agency and should avoid unnecessary involvement in purely domestic law enforcement matters at the State and local level. Thus, we are assuming that further study would quite probably indicate that domestic gun control should not be the long-term responsibility of a Customs and Excise Service but would be logically placed in the Justice Department.

B All ATF functions associated with the criminal and civil investigation of alcohol and tobacco violations, the investigation of illegal importations and exportations of arms and explosives and all matters requiring overseas investigations would be assigned to the Office of Investigations (OI) and would be integrated with the already existing branches of that organization.

C The responsibility for field investigations concerning criminal and civil violations matters dealing with the alcohol, tobacco, and illegal importation and exportation of firearms and explosives would be placed under the Regional Director of investigations (RDI), who reports to the AC/OI. All regional matters, however, dealing with the regulation of and investigation of domestic firearms matters would be placed under Special Agents in Charge for Domestic Firearms and Explosives (SAC/DFE) who will report to the AC/DFE. Thus, the field structure continues to carefully separate domestic firearms and explosive matters from the other functional areas of the Customs and Excise Service. The location and geographical areas of the current ATF SAC offices, the SAC offices, and the SAC/DFE offices would be integrated in such a manner as to provide for effective performance of Customs and ATF related functions in the most economical manner (maximum cost savings)

D An Alcohol, Tobacco, and Foreign Firearms Division (ATFFD) would be established in the Headquarters Office of Operations. It would provide, as is the case with all of the organizational entities in the Office of Operations, Servicewide program direction and guidance to ensure effective alcohol and tobacco program management and to ensure effective management of all matters dealing with the exportation and importation of firearms and explosives. This division would be concerned primarily with regulatory matters and would refer potentially criminal violations to the Office of Investigations (OI). Functions currently performed by the ATF Assistant Director (Regulatory Enforcement) would be performed by this division except that all matters dealing with domestic firearms would be the responsibility of the AC/DFE.

E In the field, an ATFF Division would be established in the Office of Operations under the direction of the Assistant Regional Commissioner, Operations. This corresponds to the organizational configurations already existing in the Customs regions, i.e., Inspection & Control, Classification and Value, Regulatory Audit, etc. This division would ensure effective, regionwide implementation of all alcohol, tobacco, and export and import control of firearms and explosives programs. The division would be concerned primarily with regulatory control.

F Those ATF geographical areas referred to as "regions and areas" will be merged into Customs regions and districts as appropriate. The locations of the Customs and Excise Regional Headquarters will be reviewed based upon an assessment of the management needs to effectively direct the combined functions. Those districts created by the merger of Customs and ATF functions will be retitled Customs and Excise Districts (CED). District Directors will, of course, have line authority over all non-investigative related Customs and Excise functions throughout their districts.

G Those ATF regulatory field offices located in cities where there is a port of entry will normally be merged with Customs offices and redesignated Customs and Excise offices. Those offices in cities where Customs ports of entry do not exist will be designated U.S. Excise offices. This designation is required in order not to confuse the public by implying that Customs functions are being performed at these locations.

H Those ATF functions associated with the Assistant Director of Administration will be integrated into the administrative structure as it now exists in Customs with administrative support services in the field being provided by an Office of Administration under the Regional Commissioner and a Headquarters Office of Administration that provides program direction to support the administrative functions being performed in the field.

I The ATF Assistant Director, (Inspection) and Chief Counsel functions would be integrated into the Chief Counsel and Assistant Commissioner, Internal Affairs structure now existing within Customs.

J Those functions associated with the Assistant Director, Technical and Scientic Services would be integrated into Customs in the following manner:

a. Laboratory associated services would be transferred to the Technical Services Division in the Office of Operations which performs similar functions. Field laboratories would be integrated and located so as to eliminate duplication and to improve overall quality of services.

b. Enforcement-related automated data processing services would be provided by the Customs Office of Enforcement Support. (Certain ADP services are already being provided to ATF by Customs).

In summary then, we would integrate ATF functions into the Customs Service in a two-phased approach with Phase 1 bringing the ATF organization substantially intact into Customs and Phase 2 calling for the following:

- Establish a position of AC/DFE to handle all matters dealing with domestic firearms and explosives;

- Establish SAC's for DFE, reporting to the AC/DFE, to carry out field domestic arms and explosives regulatory and investigative functions;

- Assign to the AC/OI investigations of alcohol, tobacco, and importation/exportation arms and explosives violations with field RDIs and SACs carrying out this responsibility;

- Establish an ATFF Division in the Headquarters Office of Operations and ATFF Division in the field Offices of Operations to ensure effective management of regulatory programs concerning alcohol, tobacco, and importation/exportation of firearms and explosives.

- Merge ATF regions and areas and Customs regions and districts creating "Customs and Excise Regional Headquarters" and "Customs and Excise Districts."

- Integrate ATF administrative, internal inspections, Chief Counsel, and technical and scientific services into Customs structure.

It should be stressed that this organizational configuration appears to us to be logical, effective, and economical; but it must be assumed that further potential joint study by ATF and Customs would be required before a precise organizational configuration is finalized. We do believe, however, that this Phase 1, Phase 2 organizational conception is an effective foundation upon which to build a U.S. Customs and Excise Service.

Conclusions

We should anticipate few major obstacles in merging the ATF functions into the existing Customs organization as described above. We believe, however, that domestic firearms and explosive control matters should eventually be placed in another Federal department. Because of the relationship of the use of firearms to serious crimes and the frequent movement of firearms used in crime in interstate commerce, we feel the most appropriate placement would be in the Department of Justice.

We wish to state in closing that we are highly motivated to support the President's policy of streamlining the Federal government and providing for more efficient and economic government services. We appreciate the opportunity to present our views with regards to this potential Customs-ATF merger. Please call upon us if we can be of further assistance

Robert E Chasen

Robert E. Chasen

SUPPORT FOR MERGER

Senator **Abdnor**. Let me ask you, you say it has wide support. All I can say we didn't find all that, maybe we will if we get all concerned areas.

Mr. **McNamar**. We will be glad to suggest additional witnesses if that will be helpful.

Senator **Abdnor**. In the industry itself you mean?

Mr. **McNamar**. I think there would be additional people in the industry, I think in the law enforcement community, for example, the International Association of Chiefs of Police, board of directors and I would ask your permission to insert in the record the statement of the board endorsing the reorganization. I understand that the testimony yesterday was perhaps not as forthcoming as you might have wished.

Senator **Abdnor**. Which one would we take, the early one or the June one?

Mr. **McNamar**. The board of directors has the final statement. They make the policy. This is an example where I think we need to have as much on the record as we possibly can. We would like to have your permission to put that in so that you know that the International Chiefs of Police does support this reorganization, as improving law enforcement.

Senator **Abdnor**. Very well.

IACP ENDORSEMENT

Mr. **Walker**. Mr. Chairman, I would like at this time to offer to you a press release from the International Association of Police Chiefs which reads briefly as follows: "The governing board of officers of the International Association of Chiefs of Police, IACP, fully endorsed the Reagan administration proposal transferring functions of the Bureau of Alcohol, Tobacco and Firearms (BATF) to the Secret Service and U.S. Customs.

The announcement was made today—and this is January 20, 1982—by Col. James P. Damos, President of IACP and Chief of the University City, Mo., Police Department."

I would like to have that made a part of the record, Mr. Chairman.

Senator **Abdnor**. I will be happy to do that.

[The information follows:]

PRESS RELEASE

International Association of Chiefs of Police

Washington, D.C.—The governing board of officers of the International Association of Chiefs of Police (IACP) fully endorsed the Reagan Administration proposal transferring functions of the Bureau of Alcohol, Tobacco and Firearms (BATF) to the Secret Service and U.S. Customs.

The announcement was made today by Colonel James P. Damos, President of IACP and Chief of the University City, Missouri Police Department.

During its monthly executive session here this week, the governing body was briefed by Treasury Deputy Assistant Secretary Robert Powis regarding details of the proposed transfer and its impact on BATF relations with state and local law enforcement.

The police executives expressed concern over the possible loss of BATF support to street policing efforts focusing on continued enforcement of firearms, arson, and explosives legislation.

The Board was assured by Treasury officials that the proposal facilitates the smoothest and most effective transition possible since it requires no new legislation and can be carried out administratively within the authority of the U.S. Treasury Department.

The proposed transfers represent a method of enforcing the firearms, arson, and explosives statutes in a more efficient manner.

The Department pledged continued support to state and local officials in these areas. The proposed transfers are subject to congressional approval for an enhanced BATF budget in this fiscal year.

The IACP Board reaffirmed its support of the need for an enhanced budget, indicating that state and local resources would not be adequate without the efforts proposed by the Treasury Department.

IACP represents more than 13,000 police executive members throughout the United States and several other countries.

BATF REMAINING A SEPARATE AGENCY

Senator Abdnor. Who is the head of it?

Mr. Walker. Chief James Damos, his executive director is Norman Darwick and I believe he testified yesterday. But I am not sure, I wasn't here yesterday, I am not sure whether his statement fully reflected the information contained in the release that was issued by the board of directors.

Senator Abdnor. May I say that yesterday we put one of the resolutions in the record saying that it would be resolved that the International Association of Chiefs of Police recommends the Presidential decision that ATF remain a separate agency and receive the necessary funding to effectively enforce the Federal firearms statute to provide needed assistance to State and local law enforcement agencies in the fight against crime and violence.

Mr. Walker. I am sure nobody is trying to mislead you, Senator, but that statement was in September at the IACP before the facts of the reorganization were out. Over the last 6 months the IACP has become fully informed and that September 1981 statement which you are reading has been superseded by their January 20, 1982 press release. If there is an confusion on that, Senator, we would like to make that clear.

Senator Abdnor. That is how I guess our confusion gets going here. We get one statement and then we find out there is another one. It does get complex.

Mr. Walker. I would suggest you call Chief Damos if there is confusion. I am sure he would be happy to come testify in favor of this reorganization.

Senator Abdnor. Thank you.

INTRODUCTORY REMARKS OF ASSISTANT SECRETARY WALKER

Mr. Walker. Mr. Chairman, I welcome the opportunity to appear before you to explain the reasons why and the benefits which will be attained from the reassignment of the Bureau of Alcohol, Tobacco and Firearms [ATF] to other Treasury bureaus. I would also like to discuss the basic plan developed by the Department to carry out the reassignment and budgetary and personnel considerations connected with this plan.

ADVANTAGES OF ATF REORGANIZATION

On November 1, 1981, the Treasury Department announced the intention of the administration to reorganize ATF by transferring functions and personnel relating to firearms and explosives to the Secret Service and those relating to alcohol and tobacco to the U.S. Customs Service. This reorganization is based on sound management decisions which will cut costs, lead to greater efficiencies and produce solid law enforcement benefits.

In July 1981, the Office of Enforcement and Operations within the Department undertook a management review of the enforcement functions of the Bureau. The most significant conclusions and recommendations of this review are as follows:

> Whatever motivation there may have been in the past for placing the function of enforcement of firearms and explosives laws in the same bureau responsible for alcohol and tobacco revenue collection and regulation, it can no longer be rationalized today.
>
> The firearms and explosives criminal enforcement and regulatory functions should be severed from ATF and those functions and personnel need to perform them should be transferred to another Treasury enforcement bureau such as the Secret Service. A study should be conducted to determine where the remaining functions of ATF criminal and regulatory enforcement could best be located.

FINDINGS OF MANAGEMENT REVIEW STUDY GROUP

Some of the other findings of the management review study group are listed as follows:

First there exists within the Bureau an inefficient regional management structure that was created because of the diverse functions and does not operate well because of the lack of commonality of purpose and interest between these functions. This regional management structure has led to unhealthy competition for resources between criminal enforcment and regulatory enforcement.

There are too many criminal enforcement offices within ATF and many of them are nonproductive with respect to firearms, explosives and arson cases. Approximately 40 to 50 of these offices should be closed with personnel reassigned to areas of the country where there is a high incidence of firearms and explosives cases and where the number of enforcement agents to do the job is insufficient.

The study found that there was generally low morale among criminal enforcement personnel brought on by budget cutbacks, media attacks and frequent program changes. Personnel did not have a sense of job security.

But the report also concluded that the ATF is viewed by State and local law enforcement as the most cooperative of all the Federal enforcement agencies and its criminal enforcement activities are held in high regard by these agencies.

REORGANIZATION PLAN

Turning to the reorganization plan. Following this study a plan was developed within the Department to reassign the functions of ATF and the people who perform them to the Secret Service and the Customs Service in a manner that would insure both efficiencies in the form of reduced personnel and costs and also effectiveness in carrying out statutorily mandated enforcement, revenue protection, and regulatory functions. In this regard, Mr. Chairman, I would like to state that the transfer contemplates transfer of functions and resources and personnel. It is not as though we are asking the Customs Service to simply enforce the alcohol law. We are transferring the alcohol enforcement capabilities of ATF to Customs with its expertise, to correct, I believe, some of the misimpressions that were made yesterday.

Similarly, in the Secret Service, when it comes to arson, explosives, firearms, we are transferring the resources and the personnel together with the functions to the Secret Service. We are not asking the Secret Service in its present form to pick up the function.

So that there is a transfer of functions in every case together with the resources and personnel as budgeted.

PERSONNEL REASSIGNMENTS

Now, the plan developed calls for the reassignment of approximately 1,731 special agents and administrative personnel to the Secret Service and either 719 or 1,019 personnel to the U.S. Customs Service depending on the level of compliance required under the FAA Act.

Of the 1,731 personnel reassigned to the Secret Service approximately 1,200 will be criminal enforcement special agents while the remaining 531 will provide administrative, technical and clerical support. The personnel transferred will carry out the enforcement and regulatory functions of the firearms, explosives and arson statutes.

Present planning calls for the reassigned personnel to operate as a separate division of the Secret Service until such time as a full merger can be effectively accomplished. The full merger will depend upon the resolution of such matters as cross training of personnel, transfer of property and equipment, shared space arrangements, development of a new organizational structure, et cetera.

The transfer of ATF functions related to alcohol and tobacco to the U.S. Customs Service will be accomplished by the reassignment of 719 personnel if there is to be compliance only with the mandatory provisions of the FAA Act. In the event that full compliance with the nonmandatory features of the FAA Act is mandated by the Congress, it will become necessary to transfer 1,019 people to the Customs Service. It is envisioned that the personnel transferred will operate as a separate division until such time as they can be assimilated into the Customs Service.

Full assimilation will depend on the resolution of problems such as cross-training of personnel, transfer of property and equipment, shared space, development of a new organizational structure, et cetera.

REASSIGNMENT OF 250 ATF PERSONNEL TO OTHER BUREAUS

The plan also calls for the outplacement of approximately 250 ATF personnel to other bureaus. These outplacements will occur as a result of budget reductions wholly apart from any reorganization or transfer of functions. Plans are underway to outplace 100 regulatory inspectors in the 1854 series to the Internal Revenue Service. Approximately 150 criminal enforcement special agents in the 1811 series will be outplaced to the U.S. Customs Service and U.S. Secret Service. ATF agents outplaced to the Customs Service will be utilized in Customs' expanded enforcement role in control of the export of critical technology, export investigations and investigations of the financial dealings of major drug traffickers and their money launderers under the Bank Secrecy Act.

BENEFITS RESULTING FROM REORGANIZATION

Turning now to the benefits we see resulting in this reorganization. I think this will succinctly state this administration's position on this subject.

The ATF reorganization and reassignment of functions to the Secret Service and the U.S. Customs Service within the Treasury Department represents a sound management decision. When combined with needed office closings and other structural changes, it will achieve economies, result in a better allocation of law enforcement resources, maintain revenue protection and provide for the desired level of alcohol regulation.

It is the logical result of Treasury's management review of ATF that revealed deficiencies, largely of an institutional nature, for which corrective action was required as well as the more general need for a more economic management of government resources.

The anomalous and at times counterproductive combination of resources devoted to disparate missions, alcohol, and tobacco revenue protection and regulation on the one hand, and criminal investigations of firearms and explosives violations on the other hand, will be terminated. These resources and functions will now be allocated to agencies with goals that are fully compatible with the received functions.

When ATF personnel who are reassigned to the Secret Service for the firearms and explosives functions are fully merged into the Secret Service, the average field office will have a combined strength and capability well beyond what either agency has today. This strength will enable field offices of the new organization to devote more personnel not on full-time protective duty to priority investigations whether counterfeiting and check forging cases—the regular investigative duties of the Secret Service—or firearms, protective intelligence, explosives or arson-type matters.

Absent protective needs, most of these personnel will be available for investigative work. Conversely, when there is a peak protective period or an urgent protective need occasioned by the visit of the President, Vice President or visiting head of state to a particular city, there will be greater personnel resources available in that city to satisfy that need.

Upon examination, the benefits of the reorganization both for the firearms/explosives function and the protective function are evident.

BENEFITS TO LAW ENFORCEMENT

It is submitted that the reassignment of the firearms and explosives functions to the Secret Service will result in a more efficient enforcement of the firearms, explosives, and arson statutes with fewer people and less cost by the following measures:

1. By putting these functions into a strictly law enforcement organization as opposed to an organization that placed great emphasis on regulation and revenue protection of two commodities in areas totally unrelated to the enforcement of the firearms and explosives laws. The Secret Service is strictly a law enforcement organization. The 1,100 field agents of the Secret Service made 6,600 arrests in fiscal year 1981 despite the fact that 45 percent of their time was devoted to protective activities; 1,700 of these arrests were made in counterfeiting cases. These accomplishments indicate a field organization strongly oriented toward the working of criminal enforcement cases and a high level of productivity. In that regard I want to address some of the concerns that have been raised at this hearing.

We intend to focus our criminal enforcement resources in the firearms and on criminal traffic areas and not in any way on innocent gun dealers and others who are simply engaging in commercial transactions. We want to make this a criminal organization focusing on criminals and that is why we feel that the reorganization of the firearms and explosives functions into the Secret Service which is a pure law enforcement agency will assist in that regard.

Second, the transfer to the Secret Service should bring about a much needed improvement in the morale and self-image of ATF personnel who are reassigned by placing them in an organization with a high level of morale and an excellent public image. These factors taken by themselves contribute to greater productivity.

PRESIDENTIAL CAMPAIGN

Senator **Abdnor**. What are you going to do in a Presidential campaign? What is going to be neglected? You borrowed some from this group already. What are you going to do?

Mr. **Walker**. We don't see a change in the allocation.

Senator **Abdnor**. Is this constant without dropping down for a period of 9 months or so while the Presidential campaign is ongoing?

Mr. **Walker**. We don't see a change because in the past as you know the Secret Service has drawn on ATF. They have also drawn on IRS and Customs for agent personnel to back them up and assist them.

Senator **Abdnor**. Commonsense would dictate that if they got just enough, and I can't believe you are extravagant by putting more people than you need presently in the ATF, tax agents, assuming they got all they can take care of in the way of business and we suddenly start robbing the pool, something doesn't add up.

Who suffers when this happens? I have often wondered about that. It is a real problem. I feel sorry, the responsibilities you are assigned. Who suffers? You can't put all these agents down in the road guarding people for 9 months and tell me that something doesn't have to give in another area.

Mr. **Walker**. It is a fact that in 1980, let's go back to 1980. I can give you some instance in the past campaign. In the past campaign because of the extensive number of candidates that were involved

Treasury enforcement personnel were required in many cases to stop what they were doing, whether it be IRS, ATF, or in Customs and assist the Secret Service. But we did it in such a way, I am told, I wasn't with the administration, at that time and this was past administration, but I was told it was done in such a way as to minimize the impact on enforcement.

This is going to be a problem in any event. Nothing is going to change from what has happened in past practices and you will always have a concern in a campaign year of making sure there is adequate protection.

It may be that budgetary adjustments will have to be made under those circumstances and requests will have to be made of a supplemental nature for additional personnel.

But there is no question in my judgment that priority investigations would be jeopardized.

Priority investigations will continue, and will continue whether or not there is a reorganization, because that is our mission at Treasury. And we think that with the reorganization that we plan here, that we will have a better handle, a better control on the utilization of our resoruces in priority matters whether it is in a campaign year or noncampaign year.

AMPLE FUNDING FOR LAW ENFORCEMENT

Senator ABDNOR. I guess I have concerns about that. I wondered how we operated in the past. If policing is as important as I think it is, as indicated from testimony yesterday, let's take Customs. We had testimony in our hearing last year that stated we have people in Customs that are making more money than you are because they are collecting all the overtime. They must be extremely busy. If you look at this committee, our records, I have been a good supporter of the President, trying to cut back in bureaucracy. This committee is the one place we insist that we explain that to Mr. Stockman when we come in here.

We are not cutting back in this area because we think enforcement is extremely important in this country. Industry must abide by the law. I think we finally agree with them. I don't know. I would have never put my amendment on the continuing resolution if I had been filled in as well as I am now.

INFORMATION ON TRANSFER

You people apparently had all the answers back in October or earlier. I never had this kind of explanation when we put on the amendment stating we should hold off reorganization until we get all the facts and hold some hearings. You have been talking to these various groups. That is fine. But that wasn't the intent when we started this. I was alarmed by this and I very sincerely and honestly thought it was time to offer that amendment. After you have gone through all this you tell me you tried to communicate with us. Maybe so, but I am learning things as we go along. I think if you have this in mind you should have a good idea what we are talking about when we first brought the subject up that we are going to wipe out BATF, and all these other marvelous things.

I am not saying this doesn't make sense, but I do think that back when I was asked to go along with this we didn't know a darn thing about what we were talking about. I am not sure you had it all figured out, and I think we were entitled to move in this manner. Affecting all the different areas of the criminal investigation, policing industry, when I see the liquor people bringing in $6 billion and $7 billion, I don't like to see that neglected.

We cleaned up that industry pretty well. I want to make sure it is taken care of. That is my concern—not trying to stop anyone or anything if you can show me an improved system. I think we have a right to know that.

Mr. **Walker**. There is no question. We welcome the opportunity to appear at these hearings.

Senator **Abdnor**. We are talking about earlier when we started this thing.

Mr. **Walker**. Mr. Chairman, we made ourselves ready and available to you and members of your staff.

Senator **Abdnor**. At the time of my amendment.

Mr. **McNamar**. We were not ready at that point in time.

Mr. **Walker**. We did brief your staff, I believe, on November 10.

Senator **Abdnor**. That was a long time ago.

Mr. **McNamar**. That was fairly far along in the process. I think the chairman's comments are well taken. One of the things that happened is that, as so often seems to happen in this town, there was a premature disclosure, which I guess they call a leak here, of the fact that we did have a management review going on and we were considering this reorganization, no discussion had been made and you began to read about it in the newspaper before, in fact, a discussion had been made.

And we couldn't have given you these answers at that time, you are quite right, and that is why we welcome the opportunity to have a forum like this where we can find out your concerns and see which ones we have adequately met and where we have not adequately met them, find out what we might do differently to meet them, so we appreciate this opportunity.

CONTINUATION OF MR. WALKER'S INTRODUCTORY REMARKS

Mr. **Walker**. Mr. Chairman, we then believe that the transfer to the Secret Service of these enforcement functions will contribute to greater productivity in the firearms, arson, and explosives area and by that I mean productivity in meaningful type cases against criminal traffic.

Now, the transfer to the Secret Service will facilitate the closing of nonproductive posts of duty and the reassignment of some of the personnel from these offices to areas where firearms, explosives, and arson violations are concentrated. In addition, these reassignments will permit a greater concentration on the firearms, explosives, and arson activities of major traffickers, criminal figures, hate groups, and terrorists.

This transfer will give the Secret Service the ability to draw on additional resources badly needed for its protective mission.

The management review conducted by the Treasury Department in connection with the assassination attempt on President Reagan on March 30, 1981, stated that the protective responsibilities of the Secret Service have been expanding in recent years while budgetary restraints reduced the number of special agents available for protective duties.

It recommended that if the Secret Service is to continue to provide the level of protection equivalent to that which it has historically achieved, the manpower and financial resources available to the Secret Service for the performance of this function must be significantly increased.

This review also found that there has been approximately a 15 percent overall decline in the special agent and uniformed division categories of the Secret Service since 1977.

The utilization of ATF agents to support the Secret Service in the protective area is not a new one. ATF routinely supports the Secret Service during campaign years. During the 1980 Presidential campaign, 600 ATF agents were used at various times in support of Secret Service protective activities.

The merger of ATF function to the Secret Service will enhance intelligence-gathering capabilities of the Service.

Individuals and groups who threaten and attack Secret Service protectees need and acquire guns and explosives. ATF's criminal investigative work in these areas frequently uncovers individuals and groups of possible interest to the Secret Service.

ATF's gun-tracing abilities as demonstrated in the Hinckley case, with the assassination attempt on the President, will greatly enhance the Secret Service's needs.

The ATF has a great deal of information on various hate groups and terrorist groups who have violated the firearms and explosives statutes. This information will be of great benefit to the Secret Service in its protective mission.

In order to be most effective in its protective mission, the Secret Service needs to maintain excellent working relations with State and local law enforcement throughout the country. ATF personnel have developed strong working relationships with State and local enforcement which will benefit the Secret Service.

This particular fact that the ATF merger will strengthen relationship of State and local law enforcement was part of the reason of very strong endorsement of the Association of the Chiefs of Police of this movement. They represent all the State and local——

IACP ENDORSEMENT

Senator ABDNOR. Let me ask, we had comments from State organizations. I hope that is not like some farm groups where the national leaders profess to speak for all the States and, I know very well, the farmers out there don't believe what the national leadership relates.

It is difficult. A few months before we get a resolution just contrary from this group and now they do a complete reversal.

Is that solely they didn't understand what you were trying to do?

Mr. WALKER. Mr. Chairman, our plans had not been announced at the time of the first meeting. That particular release in September was based upon a newspaper leak before our plans had been announced and there was obviously actions that we were dismantling an agency that had performed some valuable services and that is why the IACP reacted as they did.

After they learned our plan and after we fully briefed, they have strongly endorsed this January our proposal.

This proposal, as the Deputy Secretary has pointed out, has bipartisan support and it is strongly supported in the Reagan administration and the IACP recognizes the benefits of the reorganization.

Their first reaction was of concern because they didn't understand it, they didn't know about it. A newspaper had prematurely leaked the story.

GEORGIA PEACE OFFICERS

Senator **Abdnor**. I wish Senator Mattingly could have been here today. He was given this resolution by the Peace Officers Association of Georgia on February 15: "10,000 members of this association in the State of Georgia recommend and urges that the Bureau of Alcohol, Tobacco and Firearms be continued and receive the necessary fundings to carry out all its duties."

Mr. **Walker**. There is a group that we have not had a chance to talk to. I don't know that if they are here today in this room.

If they are, I am sure they will reconsider. [Laughter.]

Senator **Abdnor**. I hope so. We have been years with this and it isn't going to be taken care of in months. It is a selling point, a selling point to us.

I have the same concerns, the same fears and I still have some. It all sounds good.

[The information follows:]

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CAPTAIN RAYMOND PURVIS
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FRANK EDWARDS
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February 15, 1982

Mr. Burkett Van Kirk, Counsel
Treasury, Postal Service and
General Government Subcommittee
Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Mr. Van Kirk:

This letter is with reference to our telephone conversation and your letter of January 29, 1982, relative to the Bureau of Alcohol, Tobacco, and Firearms.

Unfortunately, we will be unable to have anyone appear before the Treasury Subcommittee on Appropriations which is holding hearings on February 22 and 23, but I am enclosing a copy of a resolution adopted by the Executive Committee of the Peace Officers' Association of Georgia on behalf of the membership of the Association. I hope you will be able to furnish a copy to the members of the subcommittee and also other members of the Appropriations Committee.

I shall appreciate your keeping me informed as to the outcome of this meeting.

Sincerely yours,

Floyd Hartsfield

Floyd Hartsfield
Secretary-Treasurer, POAG

A RESOLUTION

WHEREAS, crime, particularly crime involving violence, has reached catastrophic proportions not only in Georgia but over the entire nation; and

WHEREAS, the citizens of this country have indicated that crime is their number one concern, and the people are looking to government at all levels to do something about this national disgrace; and

WHEREAS, firearms and explosives are utilized at an ever increasing rate by the violent criminal; and

WHEREAS, the Bureau of Alcohol, Tobacco, and Firearms has rendered outstanding and invaluable assistance to state and local law enforcement agencies in their fight against crimes of violence; and

WHEREAS, it would be a tragedy if this Bureau were abolished or even curtailed for lack of funds.

NOW, THEREFORE, BE IT RESOLVED BY THE EXECUTIVE COMMITTEE OF THE PEACE OFFICERS' ASSOCIATION OF GEORGIA that on behalf of the 10,000 members of this Association in the State of Georgia it strongly recommends and urges that the Bureau of Alcohol, Tobacco, and Firearms be continued and that it receive the necessary funding to carry out all its duties, particularly that of enforcing the federal firearms and explosives statutes, and for the purpose of assisting state and local law enforcement agencies in their continual fight against violent crime.

BE IT FURTHER RESOLVED that the Secretary-Treasurer of the Association is instructed to transmit a copy of this resolution to the President of the United States, the Attorney General of the United States, the Secretary of the Treasury, the presiding officers of the Senate and the House of Representatives, the members of the Committee on Appropriations of the United States Senate, and the members of the Georgia Congressional Delegation.

DECISION ON TRANSFER

Mr. **Walker**. We think as a result of these hearings, the decision will be made not upon conjectures but upon facts and information and on that basis we can move forward.

Senator **Abdnor**. You are going to submit this statement to allow different areas of the country to look at it and maybe come to a——

INFORMATION ON TRANSFER

Mr. **Walker**. Recently I had an extensive press conference on this. We are in the process of mailing out our program to all of the U.S. attorneys in the country who have inquired.

Everybody who has inquired has been informed.

Senator **Abdnor**. Just those who inquired.

Mr. **Walker**. We made efforts to reach one every week. We couldn't be sure we reached everyone. Most importantly, we are trying to reach you right now.

Senator **Abdnor**. Go ahead.

CONTINUATION OF MR. WALKER'S STATEMENT

Mr. **Walker**. Turning to the regulatory and revenue protections benefits.

The Customs Service receipt of the excise tax and regulatory functions of ATF pertaining to alcohol and tobacco is a sound management decision. Both agencies collect substantial revenues, maintain laboratories for testing commodities, utilize all-in-bond procedures and have significant regulatory responsibilities.

In combining the collection of import duties with excise tax collection, Customs will follow the practice of most European countries. Apart from combining activities of common expertise, this reassignment of functions will also result in efficiencies by reducing administrative and management overhead and combining laboratory resources.

Some of the significant similarities and reasons which support the alcohol and tobacco functions going to Customs are as follows:

1. The taxes on alcoholic beverages are, in effect, commodity taxes which do not differ in any substantive way from specific rate duties assessed on imported commodities.

The resource expertise and management disciplines necessary to collect Customs duties on importation are substantially similar to the expertise and disciplines required to collect taxes on alcoholic beverages.

2. Imported merchandise is retained in Customs custody and controlled by a system of bonds, seals, warehouses, and physical supervision at all times from importation to release into consumption.

Alcoholic beverages are controlled by a similar system of physical and bond security until released into the commerce of the United States or exported with benefit to drawback.

3. BATF supervises manufacturing operations to control the use of taxable alcohol in nontaxable products with benefit of drawback or tax exemption.

Customs likewise supervises manufacturing operations to control the use of inported materials in products to be exported with benefit of drawback.

Both agencies employ similar audit and inspection disciplines for this purpose;

4. Customs already possesses significant expertise in the assessment of taxes on alcoholic beverages gained through its responsibilities for calculating these taxes on imported wines and liquors and enforcement of labeling and other restrictions.

5. Customs has eight field and one headquarters laboratories geographically dispersed which are already engaged in alcohol analysis.

6. Most cigars and cigarettes manufactured in the United States are produced in whole or in part from imported tobacco, which is stored in Customs bonded warehouses on the manufacturer's premises. Customs personnel are stationed in these warehouses and already have some familiarity with the manufacture of tobacco products.

CONTROL OF CIGARETTE TAX

The tax on cigarettes is relatively simple to control and administer, and elaborate production controls are not necessary for tax assessments in determination purposes.

The prepared statement should be corrected because the tax on cigarettes is not based on the intended retail price and quality produced or imported.

The cost benefits derived from the reorganization result from administrative and management overhead savings, closing of unproductive field offices and outplacement of enforcement personnel, and from a planned reduction in the level of FAA act enforcement.

SAVINGS FROM REASSIGNED FUNCTIONS

Following a budget level of $138 million for fiscal year 1982, the reassigned functions will be operated in fiscal year 1983 at a level of $121 million. This will represent a savings of approximately $29 million from the fiscal year 1981 level of $150 million. Specifically, these savings will be achieved from the more efficient use of the following resources:

Space and equipment; administrative and management overhead; criminal enforcement personnel; regulatory enforcement personnel.

PERSONNEL REASSIGNMENT

Turning to specific issues, illicit alcohol and cigarette smuggling enforcement. In connection with the reassignment of alcohol and tobacco functions of ATF to the Customs service, 50 ATF personnel (40 criminal enforcement special agents and 10 support), will be transferred to the Customs service to carry out the law enforcement efforts against illicit alcohol and cigarette smuggling.

These personnel will be distributed in strategic locations where the incidence of these violations is the highest.

There will be a small supervisory cadre at Customs headquarters to oversee and coordinate these functions. Additional enforcement personnel will be located in New York because of the cigarette smuggling problem in that State. The remainder of these personnel will be based strategically at several locations in the Southeast.

In these locations, the enforcement personnel will be able to take advantage of the fact that this area is both the source for contraband cigarettes to the Northeast and the center of illicit alcohol production.

DEPARTMENTAL POSITION REGARDING PUBLIC LAW 95-575

The Department's position with respect to the enforcement of the Contraband Cigarette Law (Public Law 95-575), is hereby stated as follows:

> The law explicitly states its intention that primary responsibility for cigarette tax enforcement rests at the State level with the Federal effort to be concentrated in those cases which are beyond the jurisdiction and resource capability of State agencies.

Consistent with the intention of the Congress, the Department is retaining the capability to investigate cigarette smuggling in the event it becomes necessary to assist the States.

Such assistance will be furnished to the States in cases involving significant organized crime affiliated interstate smuggling operations which are beyond the State's jurisdiction and resource capabilities.

The personnel referred to above who will be transferred to Customs will handle these investigations. Planning is underway to insure that agents are experienced in the enforcement of the contraband cigarette law so as to insure the continuance of strong Federal collaboration to the States in this area.

Personnel reassigned will also be in a position to act in an advisory capacity to the cigarette enforcement community.

A brief history of ATF's involvement in the enforcement of the contraband cigarette law will furnish some important background on this problem. ATF began enforcing the law in December 1978 with a goal of assisting State enforcement and revenue agents in efforts to collect all cigarette taxes as set forth by statute.

ATF's efforts in 1979 and 1980 together with State enforcement agencies drastically reduced the over-the-road smuggling of cigarettes into New York in locations such as Virginia, Kentucky, and North Carolina.

ATF's program included a detailed analysis of the cigarette distribution system. This analysis revealed that the constant threat to cigarette tax evasion was not as a result of over-the-road smuggling but rather at the level of the cigarette stamping agent.

To cope with this problem, ATF and the National Tobacco Tax Association initiated a program to encourage all States to use a schedule C reporting procedure to verify interstate shipments of cigarettes by interstate stamping agents. Consistent with the recognition by Congress that cigarette tax diversion is primarily a State responsibility, ATF actively trained State and local officials in cigarette smuggling investigation techniques. One hundred ninety State and local officers received such training in 1980. Additional officers were trained in 1981 with a concentration on audit capabilities, since some of the States were not exercising adequate controls to insure that proper taxes are paid on all cigarettes received by stamping agents within the State.

These programs have had notable success. Several States, including New York, have reflected increases in cigarette tax revenues. If the alcohol and tobacco functions are reassigned to the Customs Service, Customs will continue to respond to requests for assistance in those cases where the enforcement problem is of such diverse nature that they are beyond State control.

BENEFITS OF REASSIGNMENT POLICY

In conclusion, Mr. Chairman, the reassignment of functions outlined above is based on sound management principles and cost-effective planning. The firearms and explosives laws can be enforced more efficiently with fewer people in the right locations with existing Secret Service personnel available for priority firearms, explosives and arson cases.

The Secret Service will have a larger manpower base to call on for unusual protective requirements and the flow of intelligence will be facilitated.

The collection of excise taxes on alcohol and tobacco and the regulation of the alcohol industry to the degree mandated by Congress will not be impaired by the merger of these functions into the Customs Service while significant savings will be achieved.

We would appreciate the support of this committee for the funding level which we need and by approving our plan to reassign functions and personnel.

I now welcome the opportunity to answer questions you may have.

Senator **ABDNOR**. Mr. Walker, this is quite a document.

You came at me awfully fast. As you read, I was digesting and as quickly as I could where I was and ask a few questions here of Council. I even lost track, but it is pretty well set out in detail.

To be honest with you, from what we heard today and yesterday, that I want to sit down with the other members of the committee. Rather than try to ask you questions today, I would like to have you come back so we can do this once again.

Mr. **WALKER**. I will be more than happy to, Mr. Chairman.

Senator **ABDNOR**. I am trying to figure out when we can have a hearing. We will find the time and I think it would be good now that I have this information and listen to some of the concerns such as that policing the cigarette industry and bootlegging that you apparently feel that the States can take care of it.

Yesterday, it made me wonder, as I listened to the testimony about the illegal transportation of cigarettes from one State to the other where the States have jurisdictions. They have the manpower. You get the tax money off it, but they have to do the policing. I want to make sure where we are going I may want to ask more specifically about numbers—bodies you are actually going to have.

I am concerned that Customs is already overloaded and I don't think you are going to put manpower in there to do what I think is extremely important. Maybe it is.

Maybe when I have time to review it all in detail and go back to what I heard—then maybe you can address some of our concerns the next time we have you in. However, I am not quite ready to ask you the questions I think need to be asked.

I've got a hunch that maybe some of the people that testified yesterday, have seen all this and done their homework, but I would like to have time and I don't see any reason that we have to do things today or tomorrow.

And, so, with that in mind, and it is already 12 o'clock, I've got a feeling you gentlemen have a lot of things to do, so if you don't mind, there will be another hearing.

I am not going to try to pick the time today or in this moment because I've got to fit it into our schedule. I certainly hope that the members of the committee will take the time to look at this and catch up on some of the testimony we had yesterday and we will all be in a better position to come to some kind of meeting of the minds on this.

I don't even think I am going to bother askinq you questions today. We will plan to meet again in a week or two and go back into this.

I hope that is agreeable.

Mr. McNamar. That would be excellent.

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES

Senator Abdnor. Thank you. Mr. McNamar we will insert justifications for BATF in the record at this point.

Mr. McNamar. Thank you.

[The information follows:]

(Bureau of Alcohol, Tobacco and Firearms)

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1982
(dollars in thousands)

	Permanent Positions	Average Positions	Amount
FY 1982 Appropriation (Continuing Resolution) Enacted by Congress..................................	2,454	2,450	115,654
Adjustment:			
(1) Proposed Program Supplemental	530	487	22,346
Proposed Authorized Level for FY 1982 (assumes transfer BATF functions April 1982)	2,984	2,937	138,000[1]
Estimate FY 1983 (full year funding or BATF functions in Secret Service & Customs Service)	2,521	2,450	124,895

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FISCAL YEAR 1983

	FY 1981		FY 1982								FY 1983					
	BATF Appropriation		BATF		Transfer to Secret Serv.		Transfer to Customs Serv.		Total		Secret Serv.		Customs Serv.		Total	
	Ave Pos	Amt	Ave Pos	Amt	Ave Pos	Amt	Ave Pos	Amt	Ave Pos	Amt	Ave Pos	Amt	Ave Pos	Amt	Ave Pos	Amt
1. Alcohol and Tobacco Enforcement Activities	1,208	44,441	659	29,848	—	—	360	15,241	1,019	45,089	—	—	719	31,464	719	31,464
2. Firearms and Explosives Enforcement Activities	2,429	105,130	1,052	49,002	866	43,909	—	—	1,918	92,911	1,731	93,431	—	—	1,731	93,431
Unobligated Balance lapsing	—	279	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total appropriation, authorized level and budget estimates	3,637	149,850	1,711	78,850	866	43,909	360	15,241	2,937	138,000[1]	1,731	93,431	719	31,464	2,450	124,895
Permanent positions established	(3,671)		—		—		—		(2,984)		—		—		(2,521)	

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[1] Pay raise not included; pay supplemental to be requested at a later date.

February 8, 1982

REORGANIZATION OF ATF ACTIVITIES

SUMMARY

The Department, upon completion of necessary administrative and technical measures, is planning to transfer the statutory firearms and explosives functions of BATF and personnel to the Secret Service; and alcohol and tobacco revenue collection functions and regulatory functions and personnel to the Custums Service. The Bureau of Alcohol, Tobacco and Firearms as a separate organization would no longer exist. The target date of the transfer is April 1982. The FY 1982 Continuing Resolution, P.L. 97-92, has language preventing any implementation of the transfer prior to March 30, 1982. Transfer of functions after that date would be allowed unless disapproved by House and Senate Appropriations Committees.

REASONS FOR PLANNED ACTION

While investigation of hate groups, terrorists, arsonists and outlaw motorcycle gangs, as well as narcotics traffickers who illegally deal in firearms and explosives will continue, there will be greater opportunities to make more significant cases because the average combined field office will have a strength and capability well beyond what either bureau has today. These strengthened field offices will also provide a larger agent base to deal directly with peaks in the protective workload. In the past, ATF agents had to be detailed to U.S. Secret Service for this purpose.

Economies can be affected by transferring the revenue collection and regulatory functions related to alcohol and tobacco to the U.S. Customs Service. This action would not impair Treasury's ability to collect the $8 billion in excise tax revenues from these commodities.

This plan would enhance the ability of Treasury Department to carry out the Administration's law enforcement policy and existing legislative requirements. It will transfer sufficient Special Agents and support personnel to the Secret Service to enforce the firearms and explosives laws as well as an adequate number of Agents to the U.S. Customs Service for the enforcement of the alcohol and tobacco laws.

OPERATIONAL PLAN TO DISESTABLISH BATF

Effective April 1, 1982, transfer the firearms and explosives enforcement functions to the Secret Service together with 1,731 Special Agent and support personnel and the related funding necessary to carry out these functions.

Effective April 1, 1982, transfer the alcohol and tobacco revenue collection and regulatory functions to the U.S. Customs Service together with 719 personnel and related funding necessary to carry out these functions.

Of the 3,433 positions presently in ATF, 983 will be eliminated by the end of FY 1982. As of January 26, 1982, 376 positions have been reduced through attrition.

The proposed FY 1982 budget of $138 million does not include the October 1981 pay raise requirements needed for ATF to accomplish the plan. In addition, the proposed funding level assumes that Congress would not earmark funds for administration of the Federal Alcohol Administration Act.

A budget of $124.9 million will be needed to carry on the transfer of ATF functions and personnel in FY 1983.

It should be further emphasized that the proposed transfer will strengthen the existing law enforcement functions carried out by the Department. This will be accomplished in several ways:

The firearms and explosives statutes will be more efficiently enforced by:

- closing a number of small non-productive offices and reassigning agents to areas which are understaffed.
- improving morale and productivity following reassignment to Secret Service based on job security plus better image.
- placing these functions in a strictly law enforcement bureau.
- making Secret Service resources available for work on ATF functions.

More resources would be available to the Secret Service for protective functions.

Intelligence gathering capability of the Secret Service would be enhanced.

Secret Service relationships with state and local law enforcement organization would be enhanced.

SELECTED WORKLOAD DATA

Activity and Principal Workload Factors	FY 1981 Actual	FY 1982 Estimate	FY 1983 Estimate
Alcohol and Tobacco:			
a. Alcohol Revenue Collected ($000):			
Distilled Spirits	3,925,005	4,065,000	4,106,000
Wine	227,536	265,000	267,000
Beer	1,535,872	1,568,000	1,583,000
Total Revenue	5,688,413	5,898,000	5,956,000
b. Tobacco Revenue Collected ($000)	2,583,857	2,610,000	2,636,000
c. Alcohol and Tobacco Investigations Completed	409	266	266
Firearms and Explosives:			
d. Firearms and Explosives Investigations Completed	11,698	10,821	11,673
e. Firearms Traces	38,501	38,000	38,000
f. Explosives Traces	1,067	1,183	1,337

SUBCOMMITTEE RECESS

Senator **Abdnor**. It is almost 12 o'clock.

We have one more witness, the NRA, if they don't mind, I think we will recess now and reconvene at 2 o'clock this afternoon.

Thank you.

We will stand in recess.

[Whereupon, at 11:55 a.m., Tuesday, February 23, the subcommittee was recessed, to reconvene at 2 p.m., the same day.]

(AFTERNOON SESSION 2:10 P.M., TUESDAY, FEBRUARY 23, 1982)

NONDEPARTMENTAL WITNESSES

NATIONAL RIFLE ASSOCIATION (NRA)

STATEMENT OF NEAL KNOX, NATIONAL RIFLE ASSOCIATION

Senator ABDNOR. The subcommittee will come to order.

We have the testimony here of Mr. Neal Knox of the National Rifle Association. I am sorry I was delayed so long. I was tied up in a meeting and I am 10 minutes late. We are happy to have you and we appreciate your patience.

Mr. KNOX. Thank you, Mr. Chairman. It is my pleasure to be here and no apologies are needed at all. I know you are a busy man.

To try to summarize my testimony, I would appreciate it be put into the record, the first part of my testimony concerns the problems with the existing law as well as with the agency that has been enforcing the law.

HISTORY OF AGENCY

I think a little history might be in order. The agency came from the IRS, Internal Revenue Service, because it was a tax measure when originally, in 1935, the Federal Government got into the whole question of firearms. This agency was created in 1971, I believe it was, not by the Gun Control Act but rather in an effort to correct the abuses that had occurred under IRS, and it was hoped at that time that it would make them a better agency.

This agency was given the responsibility by the Congress for doing something about gun crime and then Congress gave more money, more agents than there was use for work to be done.

BATF ENFORCEMENT ACTIVITIES

To justify its existence, BATF headquarters began to pressure their field agents to make more cases, and under those circumstances abuses were inevitable, particularly since the Justice Department will not take any case in which there are State or local law violations, they want those to be handled by the local police.

The typical gun crimes, crimes with guns, robberies and murders, are State crimes, areas outside the jurisdiction of the Congress or of the Federal agency. The BATF headquarters wanted to make large numbers of arrests, make large numbers of seizures in firearms. In order to justify its existence and gain headlines, it began to concentrate on the easy cases and those were the cases that were made. They set up large numbers of relatively—primarily honest citizens who either believed they were obeying the law or were in technical violations of the law, the kind of people who were unlikely to resist arrest or otherwise endanger the Nation.

In the course of making these cases, BATF headquarters made it clear over a number of years that it would cover up rather than punish even the most serious infractions committed by its agents. In hearings held in 1980, BATF conceded that in the 8 years since its formation, during which it averaged approximately 1,000 agents working on firearms cases, precisely 1 agent had been fired for arrest-related misconduct, 4 had been given written reprimands, and 2 were orally admonished.

This is the record of an agency which is covering up almost all misconduct as a matter of policy. No fewer than four congressional investigations have been made into the agency's conduct over this period. Each one found evidence of civil liberties abuses. As a result, a majority of the Senate and nearly 40 percent of the House of Representatives have cosponsored legislation intended to correct these abuses.

REFERENCE TO PREVIOUS HEARINGS

Rather than detailing these abuses—which have ranged from use of perjured testimony, to physical abuse, to refusal to return confiscated firearms collections after the owner was cleared of all charges—I would refer the committee to the three Senate hearings on the subject. These are "Oversight Hearings on the Bureau of Alcohol, Tobacco, and Firearms," part 1, Senate Committee on Appropriations, July 1979, and part 2, April 1980, and "Gun Control and Constitutional Rights," Senate Committee on the Judiciary, Subcommittee of the Constitution, September 1980. The question is not whether these abuses have existed and continue to this day, but what has been done by headquarters to discipline those responsible.

Headquarters has sought to compound abuses with coverup techniques—a cover-up that has extended even to congressional committees.

The net effect of BATF's statements and policies has been to cause serious damage to a large number of law-abiding, but unaware, or misinformed American firearms owners. However, our concern has not been only with the way the Agency enforces the law, but with the law itself. If the law is changed so that improper cases cannot be brought, it matters little which agency enforces it; conversely, if the law is left unchanged, even the best agency may sooner or later be corrupted by its excessive powers and vague commands.

RESULT OF 1968 GUN CONTROL ACT

Whatever agency enforces the 1968 Gun Control Act as it exists today, there will be problems for the law-abiding and abuses of those who inadvertently violate its vague provisions. If the past has shown anything, it has proved that the Federal efforts toward gun control laws have been a failure today for there is far more crime—and far more of the crimes with firearms that this law was supposed to reduce. Clearly the focus of both the law and its enforcement must be changed.

I believe the Reagan administration, by its indicated intent to reduce the size of the BATF, to eliminate its bureau status, and to spread its functions into other Treasury agencies, clearly recognizes the failures of the past policies. However, we are discomforted by the statement I heard this morning of the Treasury that there will be no reduction in personnel. Our members are concerned that this transfer has been supported by groups that are opposed to private ownership of firearms. The Nation's crime problem simply cannot be solved by throwing more money and manpower, into regulation of the legitimate traffic in firearms. That effort has failed. It has no impact on the illegal use of firearms.

NRA-HIGHLIGHTED PROBLEMS

Mr. Chairman, from the perspective of the NRA, the problems our members have faced—the problems we have helped bring to the public's attention—are derived from two sources. The first source is the law itself. Whatever agency enforces the current law will be required to enforce a vague, technical, and confusing law. This particular source would be, to some extent, removed by the enactment of S. 1030, the Federal Firearm Owners Protection Act, upon which the Senate Judiciary Committee has completed 3 days of hearings.

The second source, the policies of the enforcing agency, are not necessarily subject to legislative correction. We realize that any law is only as good as the policies and procedures utilized by the enforcing agency. The track record of BATF in the areas of civil liberties abuses and the bureaucratic rather than law enforcement attitudes which permeated the Bureau's enforcement policies, lead us to believe that, no matter what the outcome of the reorganization proposal, the potential for a continuation of the past problems exist.

The NRA has played a key role in bringing the problems within this agency to the attention of the Congress and the public. Therefore, we are extremely interested in anything that happens in regard to this agency or whatever agency may be given responsibility for enforcing the Gun Control Act.

TRANSFER OF FIREARM AUTHORITY TO SECRET SERVICE

The committee is particularly interested in a simple answer to a simple question: "Does the NRA favor or oppose the transfer of firearms law enforcement to the Secret Service?"

Our answer, Mr. Chairman, is that so long as the same agents are enforcing the same law it makes no difference whether they carry badges marked BATF or Secret Service.

We have total confidence in the Reagan administration's determination to eliminate the abuses of the past, whatever name is on the door of the firearms law enforcement agency. However, we have no doubt that unless the law itself is changed, some future administration will allow the pernicious acts of the past to be repeated, and the prevention of those abuses by acting a reform of the Gun Control Act is our primary concern.

JUSTICE DEPARTMENT POLICY

I mentioned the Justice Department policy. I should point out that Justice is the agency which has prosecuted each of the cases where there has been bad abuses in the past. Further, because of their policy of not accepting cases that are a violation of local law, we know that within all reason there will be no change, no improvement if, as has been mentioned, there is ever any transfer to Justice. I know that is not the question before the body today, but I wanted to mention that we are irrevocally opposed to such a transfer.

I should point out, I think also that the function of the Federal firearms enforcement agency really has nothing to do with crime, it has to do with making cases, making a mallum prohibition that doesn't affect the crime problem and has no impact upon the crime problem.

This morning a reference was made to transfering the firearms law enforcement so that they can continue to take care of gun trafficking and drug smuggling and the Klu Klux Kan and motorcycle gangs and a few such cases, but they are a minute fraction of BATF's activities.

The groups most hated by the public were listed, I believe, in order to influence the public to think those are the major activities of this agency. They have not been in the past and I don't think there are that many cases that could be in that area in the future.

What we have seen in the past is a pattern, a policy of attacking the wrong group of people. I think that those must be changed no matter where the enforcement of the gun law goes. I think they must not have so many agents that they are looking for something to do.

PREPARED STATEMENT

Mr. Chairman, I appreciate this opportunity to be here and I am glad to answer any questions you may have. I would like to have my statement placed in the record.

[The statement follows:]

PREPARED STATEMENT OF NEAL KNOX

NATIONAL RIFLE ASSOCIATION

Mr. Chairman, Members of the Subcommittee:

I thank you for the opportunity to present the National Rifle Association's views and concerns regarding the proposed transfer of firearms enforcement functions from the Bureau of Alcohol, Tobacco and Firearms to the Secret Service, within the Department of the Treasury.

The current Federal firearms laws are vague and technical, and as a result, they are confusing both to those who enforce the law and those who seek to obey it. The policies established by the Bureau make the worst of a bad situation by encouraging the making of large numbers of cases by any method and at any cost; by ignoring the criminal misuse of firearms -- and those sections of the law which could be used against violent criminals; and by covering up or even promoting, rather than punishing, those agents and administrators who have committed abuses against law-abiding citizens-abuses which have been well documented before both Senate and House Committees. These factors are crucial to any appraisal of the proposed move.

Another factor which should be considered is that the BATF was not created by the Gun Control Act of 1968; it wasn't established until 1972, when the Nixon Administration formed it from a division within the Internal Revenue Service. It was hoped that the abuses of honest citizens which then existed, and the lack of enforcement activities against violent criminals which then existed, would be changed by the new status. Instead, the new bureau merely expanded the problems that existed when it began enforcing the Gun Control Act as an IRS division. We submit that one cause of the misdirected efforts of the agency, both as an IRS division and as an independent Bureau, is the misdirection of the Gun Control Act itself.

The Gun Control Act of 1968 is actually a conglomeration of three separate bills enacted upon two different dates. The result is a law not only flawed in its law enforcement philosophy but with numerous defects in its substance. Four major defects are the basis of the problems which we have experienced with the BATF.

First, the law is extremely technical. Only one subsection of one section deals with prohibitive conduct which a normal person would consider immoral or criminal in itself. The bulk of the statute is devoted to technical rules regarding conduct which ordinary people would not consider innately criminal or immoral. For example, transferring a firearm to a relative or friend who resides in a different state is not only an offense, but a federal felony punishable by five years imprisonment. This is so even if the laws of the transferee's or the laws of the friend's state, would in no way be violated by the transfer or possession.

Second, many of the provisions of the Gun Control Act are extremely vague. One would expect that a statute punishing certain conduct by five years federal imprisonment would at least define the conduct in such a way that an American citizen would know clearly whether or not he or she was committing a crime. But this is hardly the case. For example, it is a federal felony to "engage in the business" of dealing in firearms, but the statute has no definition of what constitutes engaging in the business. Federal courts have held that under this ambiguous phrase there is no requirement of a minimum level of business, minimum number of employees, a minimum amount of income, or even a requirement of open advertising. Citizens who have collected hundreds of firearms and occasionally swap or sell some to improve their collection, and ordinary gun owners who are selling a few of their hunting arms to raise needed finances, have been arrested for selling as few as two of their own firearms, and sometimes convicted for selling as few as four, over a period of six months or a year.

During one prosecution of this type BATF's own expert witness, a BATF employee summoned from his Washington headquarters, acknowledged selling over seventy of his own firearms without a dealer's license, not only illustrating the double standard involved but the fact that even the Agency's own administrators were sometimes "violating the statute" -- if it was a violation -- to a greater degree than the persons being prosecuted.

Third, many sections of the statute are confusing. For example, a licensed firearm dealer is required to keep records of acquisitions and tranfers of guns, and to sell only at a certain location and with certain paperwork. A private citizen, selling from his or her own collection, is not so limited. When a licensed dealer also has a collection which was purchased privately and is not kept at or sold through his or her business establishment, is the dealer not required to record the acquisition and sale? Even BATF itself seems unable to consistently answer this question, yet it has used this confusing section to prosecute individuals who had no criminal intent.

In 1972, the Bureau issued a public ruling that a licensed dealer could keep personal firearms on the business premises without recording them so long as they were specially marked. Yet over the next few years BATF proceeded to prosecute dealers who had not even brought the firearms onto the business premises, but who sold a privately owned firearm at their home to another private citizen. While one of those prosecutions was pending, BATF's acting director wrote Senator Hayakawa that it was completely legal for a dealer to sell a privately owned firearm without recording the sale. BATF further explained that this had always been the policy!

When the dealer's attorney introduced this letter as an exhibit in a motion for a new trial, contending that his client had been prosecuted for doing what the head of BATF contended was perfectly legal, BATF responded with a second letter from its current director retracting the first letter and stating that it was illegal for a licensed dealer to sell privately owned firearms except by logging them into the business inventory, selling them from the business premises, and recording them as a dealer sale. Only a few months later, however, that BATF director was quoted in a magazine interview as stating that a dealer could sell privately owned firearms off the business premises at a gun show, stating "there's not a damned thing wrong with that".

The transcript of that interview was specifically approved by BATF. This might be considered a bureaucratic comedy of errors, except that when the result is honest American citizens being prosecuted, sentenced to federal prisons and destroyed in their private lives, the humor is lacking.

Fourth, the Gun Control Act of 1968 compounds these technical, vague and confusing commandments by permitting prosecution for purely unintentional violations. When Congress enacted the Gun Control Act, it simply made it a federal felony to violate the bulk of the Act's sections. In several earlier decisions, the federal courts read an intent to require at least knowing in similar statutes which lacked express descriptions of the state of mind required for conviction. Courts have ruled that Congress implied intent to violate the law. The federal courts, however, have refused to read a requirement of intent into the Gun Control Act, stating in one instance that the silence of Congress meant that unintentional violations would be prosecuted as felonies.

The federal courts have gone so far as to rule that reliance upon the opinion of an attorney that a given act would not violate these vague and confusing requirements is no defense at all, and a person charged with an accidental violation may even be precluded from putting on evidence to that effect. The combination of technical requirements, vague commands, confusing mandates and the power to prosecute for unintentional violations begged for discretionary, discriminatory and abusive enforcement. And that is precisely what has happened.

The effects of a bad law have been compounded by the policies promulgated by the Bureau's Washington headquarters and other bureaucratic overlays. Headquarters made it clear that it expected agents to make cases at whatever cost, that it would cover up misdeeds committed in the course of such pursuit, and it undertook to mislead both Congress and the public with reference to such misconduct. This necessarily meant that agents guilty of such acts were more likely to be promoted than punished, and scrupulous agents were likely to stagnate or be subject to sanctions for failure to meet productivity standards.

When BATF headquarters pressured field agents to make cases, abuses were inevitable. The creation of quality cases against real criminals was unlikely, for such cases require a good deal of skilled undercover work, which is not conducive to statistic building.

What BATF headquarters did find appealing were mass arrests and large scale confiscations of firearms, cases which could make the headlines and hopefully lead to more appropriations. These became the cases that were made. But if the object is mass production of cases and confiscation, the easiest and safest way to achieve it in a hurry is to "set up" large numbers of relatively honest citizens, who believe they are obeying the law, or can easily be induced into technical violations, and are unlikely to resist arrest or otherwise endanger the agent.

In the course of making these cases, BATF headquarters made it clear over a number of years that it would cover up rather than punish even the most serious infractions committed by its agents. In hearings held in 1980 before this Subcommittee, BATF conceded that in the eight years since its formation, during which it averaged approximately a thousand agents working on firearms cases, precisely one agent had been fired for arrest-related misconduct, four had been "given written reprimands" and "two were orally admonished".

This is the record of an agency which is covering up almost all misconduct as a matter of policy. No fewer than four Congressional investigations have been made into the Agency's conduct over this period. Each one found evidence of civil liberties abuses. As a result, a majority of the Senate and nearly 40 percent of the House of Representatives have cosponsored legislation intended to correct these abuses.

Rather than detailing these abuses -- which have ranged from use of perjured testimony, to physical abuse, to refusal to return confiscated firearms collections after the owner was cleared of all charges -- I would refer the Committee to the three Senate hearings on the subject. These are "Oversight Hearings on the Bureau of Alcohol, Tobacco and Firearms", part one, Senate Committee on Appropriations, July 1979, and part two, April, 1980, and "Gun Control and Constitutional Rights," Senate Committee on the Judiciary, Subcommittee on the Constitution, September, 1980. The question is not whether these abuses have existed and continue to this day, but what has been done by headquarters to discipline those responsible.

Headquarters has sought to compound abuses with cover up techniques -- a cover up that has extended even to Congressional Committees.

The net effect of BATF's statements and policies has been to cause serious damage to a large number of law-abiding, but unaware, or misinformed American firearms owners. However, our concern has not been only with the way the agency enforces the law, but with the law itself. If the law is changed so that improper cases cannot be brought, it matters little which Agency enforces it; conversely, if the law is left unchanged, even the best agency may sooner or later be corrupted by its excessive powers and vague commands.

Whatever agency enforces the 1968 Gun Control Act as it exists today, there will be problems for the law-abiding, and abuses of those who inadvertently violate its vague provisions. If the past has shown anything, it has proved that the Federal efforts toward "gun control" laws have been a failure today for there is far more crime -- and far more of the crimes with firearms that this law was supposed to reduce. Clearly the focus of both the law and its enforcement must be changed.

I believe the Reagan Administration, by its indicated intent to reduce the size of the BATF, to eliminate its Bureau status, and to spread its functions into other Treasury agencies, clearly recognizes the failures of the past policies. The nation's crime problem simply cannot be solved by throwing more money and manpower, into regulation of the legitimate traffic in firearms. That effort has failed. It has no impact on the illegal use of firearms.

Mr. Chairman, from the perspective of the NRA, the problems our members have faced -- the problems we have helped bring to the public's attention -- are derived from two sources. The first source is the law itself. Whatever Agency enforces the current 1968 Gun Control Act will be required to enforce a vague, technical and confusing law. This particular source would be, to some extent, removed by the enactment of S. 1030, the Federal Firearm Owners Protection Act, upon which the Senate Judiciary Committee has completed three days of hearings.

The second source, the policies of the enforcing agency, are not necessarily subject to legislative correction. We realize that any law is only as good as the policies and proceedures utilized by the enforcing agency. The track record of BATF in the areas of civil liberties abuses and the bureaucratic rather than law enforcement attitudes which permeated the Bureau's enforcement policies, lead us to believe that, no matter what the outcome of the reorganization proposal, the potential for a continuation of the past problems exists.

The National Rifle Association has played a key role in bringing the problems within this Agency to the attention of the Congress and the public. Therefore, we are extremely interested in anything than happens in regard to this Agency or whatever Agency may be given responsibility for enforcing the Gun Control Act.

This Committee is particularly interested in a simple answer to a simple question: "Does the NRA favor or oppose the transfer of firearms law enforcement to the Secret Service?"

Our answer, Mr. Chairman, is that so long as the same agents are enforcing the same law it makes no difference whether they carry badges marked BATF or Secret Service.

We have total confidence in the Reagan Administration's determination to eliminate the abuses of the past, whatever name is on the door of the firearms law enforcement agency. However, we have no doubt that unless the law itself is changed, some future Administration will allow the pernicious acts of the past to be repeated, and the prevention of those abuses by enacting a reform of the Gun Control Act is our primary concern.

Thank you for the opportunity to appear before this Committee.

ARSON A PROBLEM

Senator **Abdnor**. Thank you, Mr. Knox. Once again I say to you, I appreciate your tolerance regarding our keeping you so long. I can appreciate the NRA's concern.

Would you disagree with the fact that we do have an obligation to the liquor dealers, and cigarette people, or because of arson, and the great interest in what transpires in this bill. The proper policing of that which falls under BATF, is that also, would you agree, an important part of it?

Mr. **Knox**. Yes, sir. It is not an area in which we are directly involved or concerned. We have heard many good things about the work of BATF in the area of arson. I will admit that I have some concern about what their work in arson has indicated. I believe that the record is rather clear that they got into that area not by specific authorization of Congress but rather because of court case and the fact that they needed something to do.

Senator **Abdnor**. Would you agree it is a problem when 27 percent of the fires is contributed to arsonists?

Mr. **Knox**. Arson, I believe, is definitely a problem.

Senator **Abdnor**. It threatens people's lives. I don't know how they got into it. Is it something you think should be ignored?

Mr. **Knox**. I am not suggesting that it should be ignored. I am merely commenting that their efforts without specific congressional authority to get into the arson area is an indication they need things to do. I am not suggesting that Congress should not necessarily get into arson or its agencies should not get into that; I know that is a problem. It is an area outside of our primary concern.

I merely wanted to point out that they had more agents than they could justify in the fields that they were, therefore they got into this area. I understand they have done a good job there.

Senator **Abdnor**. The indication that we have would support that. I really can't tell you how they got into it. I always assumed they were assigned by their superiors.

You heard Congressman Dingell, I suppose. Would you agree with much of what he said?

PAST PROBLEMS WITH BATF CONTINUING

Mr. **Knox**. With very much, I certainly would. He talked about some of the specific abuses and he indicated that the problems are continuing. From my personal knowledge, I am aware that this type of case that we have had problems with in the past are continuing. I think that there have been efforts from Washington to stop it, but I have seen evidence that it is still going on, at least to a limited degree. I feel like the Agency has been under a lot of heat and a lot of public and congressional watching of what they do. In the light of that, the fact they still have conducted some cases, command cases or attempted to, which they stated they did not intend to do without the specific authorization of the Director, that concerns me, to see this continuing to happen.

Senator **Abdnor**. I think you probably understand as well as we on the committee that we don't have all of the options in the world with regard to these hearings. It looks to me like we are discussing one proposal that is coming about because of a Treasury order unless we stop it versus the status quo. It isn't like we are writing legislation here that would come out with what you would like. I think I have my name on some legislation I would like, but I think the authorizing committee would wring any neck if I tried to bring something out.

Now we are faced with the question. Do we follow the Treasury recommendation or do we stay with what we have? If you had to make a decision, what would you suggest?

Mr. KNOX. We have been faced with this question and the Senate is now faced with it. We have debated it. There are merits and demerits to the proposal. The problems that we have seen in the past are largely due to improper management. At the same time, we are aware, as the committee is aware, that the Secret Service needs manpower, which is one part of this proposal, I believe, they need better trained people because during the presidential election years they have a great need for people, but we are also aware that in the years when there is no election, they have been looking for something to do and I confess concern about having more agents than there is something to do. We have seen the results of that in the past.

Senator ABDNOR. Let me ask you a hypothetical. Let's say a year or two down the road this reorganization actually transpires. The Secret Service walked into your office and says: "Almost all of your members own guns, in order to protect the President" because that is one of their prime responsibilities, "in order to protect the President and provide for his security we are going to need your membership list." Would you give that membership list?

Mr. KNOX. We tell them to buzz off.

Senator ABDNOR. I wonder, because I don't know, if that could happen. I don't know what right they would have, but that is a conceivable a situation that could happen. Or it might be the Pope if he comes back to visit this country. Who knows?

BATF FORM 4473

Are you familiar with BATF form 4473?

Mr. KNOX. Yes, sir.

Senator ABDNOR. Would you not agree that no State and local police department keep xerox copies of those forms?

Mr. KNOX. The form is kept by the dealer. It is considered a piece of the records, permanent records of the dealer and his property. It may under certain circumstances be inspected by either the agency or the local police and copies may be obtained by the agencies or by local police when there is an investigation of a specific criminal activity.

There was a proposal in 1978 by BATF that information on the 4473's be transmitted to Washington and I may be overstating that a little bit, but much of the information that is in the dealer's records they did want to be put into a central file in Washington and this was contrary to the specific authorization of Congress in 1968 when the Gun Control Act was passed, many who were afraid what might be done with those 4473's. So when BATF proposed that in 1978 there was considerable outpouring of opposition from the membership, gun owners in general across the country, objecting to the privacy violations that might well occur and those proposed regulations went down in flames. They were withdrawn by the agency. The agency was chastised by the Congress and their budget was cut, the amount they had expected to spend on this program.

Senator **Abdnor**. Wouldn't you think that if we were to follow through with Treasury's reorganization most of those forms would end up in the Secret Service computer?

Mr. **Knox**. No, sir, I don't believe they would or they could under present law and we would oppose that tooth and nail. But I really don't think that would be very likely to happen and anyone who would propose it, even with the prestige of the Secret Service, they would find very fierce opposition.

Senator **Abdnor**. You are very fiercely opposed presently with some things. They are still getting done in the present system. You feel strongly they are going beyond their scope and their possibilities and they are still doing it.

Mr. **Knox**. They have not obtained those records. The problem has been in the enforcement policies of the agency.

Senator **Abdnor**. All I am saying is, once it gets over there, you may find it even more difficult to deal with.

I don't have to take a backseat in my support of the National Rifle Association. I have been opposed to the Gun Control Act. I am wondering however, if we are not jumping from the frying pan into the fire by going from the BATF to the Secret Service. I've just got to believe, while you don't like it, it could possibly happen, that these names and these registrations could end up in the computers of the Secret Service. Maybe I am wrong, but I don't think so.

Your organization, certainly you speak for a lot of gun lovers in this country, you share love in the sport—I need to know because we are going to be making some decisions down the road and I stopped any action today because I want to bring the Treasury back after I have had a full opportunity to digest the document they handed us today, as well as the testimony we have been received in the past 2 days. If you had the worst of both worlds, would you take the Treasury proposal over what we have today?

FUTURE PROBLEMS IN PROPOSED BATF TRANSFER

Mr. **Knox**. Mr. Chairman, I would like first to say that we fully recognize your support. NRA members in the State of South Dakota and I appreciate that and I appreciate very much what you are doing here and the concerns you have just expressed.

The concerns you have may be quite valid as to the downside, as it were, of this proposed transfer. There could be unquestionably some great problems down the line.

I frankly don't have the answer to all the questions you have raised and that I know you are concerned about. I appreciate the fact that you are concerned. I am rather thankful that on this one I don't have to vote. I have it lucky. I am not a Senator and I don't have to vote which way to go, and I would like to be able to give you some firm guidance from our association as to what I thought that our members wanted and because there are so many pluses and minuses in this question, I can't give you a specific answer, and I don't think that our membership is totally of one mind. I know there are an increasing number who are concerned about the possibility that we might, as you say, jump from the frying pan into the fire.

Some comments made to one of our people by some of our members out in the States at a meeting just a couple of nights ago, they are concerned about the very things that you are concerned about, but there are also assurances from the administration that they want to clean up the ATF act, they feel it can best be done by improving the management and they might be correct in that.

VIEWS OF NRA MEMBERS

Senator Abdnor. Mr. Knox, our options are pretty limited as I see it from here. We have been handed a proposal by the Treasury Department that would be probably put into effect the transfer if we had not adopted my amendment putting a halt to it until we had an opportunity to have some hearings. What we are really trying to do is get some input, so we can give all of the ramifications consideration. That is why we are holding these hearings. We are trying to get some guidance and a feeling from the people who have to live under all the different divisions of the BATF.

I don't know any group who speaks more for the gun lovers in this country than your organization. It is a tremendous group. Maybe within the days ahead—we are coming back here. We have not set the exact date, in 10 days or so. Can you give us some thoughts on what your people are thinking?

Mr. Knox. We will certainly be glad to give it further thought and I believe that the hearings themselves, comments, information that will be coming out might help us to reach a conclusion in our mind as to what is best in the same way that the committee is considering these exact same questions in trying to elicit information in order to make a decision.

RETURNING GUN CONTROL FUNCTION TO IRS

Senator Abdnor. Let me ask you one last thing. What would you think of putting the gun control function of the BATF back into the IRS?

Mr. Knox. Well, I will admit it has been discussed. The Internal Revenue Service was given the firearms law enforcement, as I indicated in my earlier comments, back in 1935 because it was a taxing measure, a tax was imposed upon sawed-off shotguns and machineguns and any other weapon category, unusual devices.

In 1964 or thereabouts, Senator Tom Dodd and various members of the committee then who were concerned, justifiably, about the rising crime rate in this Nation and about the amount of that crime committed by firearms, wanted to do something about it from the Federal standpoint. They asked IRS how many people within at that time the ATF they had, how many man-years of work are going into this area. Well, they had, I don't remember how many, but just a handful of man-years. So the deemphasis was put on firearms and by 1968 at the time the Gun Control Act was passed they had some 214 man-years, if I recall the figures correctly. By 1971 at the time the reorganization was considered to make

BATF a separate bureau, they had some 800 agents. Today we have about 1,200 to 1,500 agents. They are enforcing the same law. We have seen gun crimes doubled.

As a pragmatist we can see that it didn't work but we also see a tremendous number of abuses of ordinary citizens because these guys needed something to do.

Instead of transferring into a law enforcement agency, consideration might very well be given to the first area of concern in the law which is a taxing and regulatory effort to licensing of commercial dealing in firearms and instead of putting that into some law enforcement agency who deals with serious crime problems, perhaps they should have those dealers and manufacturers addressed and dealt with by an agency that is strictly regulatory in nature. They came from IRS, perhaps they should go back to IRS. I don't think anyone has a total hand on that question. It is not one that has been adequately addressed, but it might be that therein lies the solution, and get away from trying to put a man with agents that go out and deal with the mafia one day, deal with drug smugglers, deal with assassins and terrorists, maybe they ought to go back to simple regulatory approach and get away from a law enforcement mentality of dealing with what is essentially a regulatory function.

Senator ABDNOR. That is something to think about.

ADDITIONAL HEARINGS NEEDED

I will tell you, I reached the decision today in these hearings that we need more hearings. How many more I am not sure. But today I felt that I finally received a package that I could look at and study and give some thought to as to how it would work versus what we have. We had some very excellent testimony from those who are affected not only by you, but distillers, cigarette people and about the arson problem. I think we've got a lot of digesting to do and that is why I decided we will be coming back for further hearings.

If you have additional thoughts, we are hoping to hear from you.

SUBCOMMITTEE RECESS

With that, I thank you for coming forward and we will recess the subcommittee subject to the call of the Chair. We don't know exactly what day we will have the next hearing. I want the committee members who were not here today to have an opportunity to review all the testimony we received prior to the Treasury Department coming forward with their very extended programs so we can now see what they have in mind.

Thank you.

[Whereupon, at 2:45 p.m., Tuesday, February 23, the subcommittee was recessed, to reconvene, at the call of the Chair.]

PROPOSED DISSOLUTION OF BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

MONDAY, MARCH 8, 1982

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL
SERVICE, AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 1318, Everett McKinley Dirksen Senate Office Building, Hon. James Abdnor (chairman) presiding.

Present: Senator Abdnor.

NONDEPARTMENTAL WITNESSES

NATIONAL RIFLE ASSOCIATION

STATEMENT OF NEAL KNOX, NATIONAL RIFLE ASSOCIATION

INTRODUCTION OF WITNESS

Senator ABDNOR. The subcommittee will come to order.

Today we will continue our hearings on whether or not appropriated funds should be used to dissolve and abolish the Bureau of Alcohol, Tobacco, and Firearms. Our first witness this morning is Mr. Neal Knox of the National Rifle Association [NRA]. After that we shall hear from the Hon. John Walker, the Assistant Secretary of the Treasury for Enforcement and Operations.

Mr. Knox, we welcome you back to our committee. You seem to be a more frequent witness here. I am sorry we had to start late.

Mr. KNOX. It is good to be before you again, Mr. Chairman.

I appreciate this opportunity to come before you to express the views of NRA concerning this proposed transfer of BATF to the Secret Service.

NRA COMPLIANCE WITH LAW

When I testified two weeks ago, I pointed out that the NRA has long been a critic of the 1968 Gun Control Act, and the way in which the BATF has enforced that act. Despite our disagreement with the intent behind the Federal gun laws, and the specific invitation for abuse which that law invites by its provisions and frequently vague wording, we are well aware that the law of the land must be enforced; the membership of the NRA would have it no other way, for we are an association of law-abiding citizens.

However, we have objected to the fact that the Bureau has had far too many agents assigned to enforcement of the Federal gun control law; they have more agents than there are legitimate cases to be prosecuted, by far. The result has been harassment of dealers, pointless felony prosecutions of normally law-abiding citizens who have no previous records, and who have, at worse, merely violated a technical provision of the little-understood and illogical statute.

Many of the successful prosecutions by the BATF have shocked even the most avid advocates of "gun control," both because of the methods used to obtain a conviction and because of the triviality of the actual offense—and the seriousness of the conviction.

Such cases have outraged the NRA membership, and have caused us to redouble the efforts against the unclear and excessive provisions of the law which have made such cases possible, and against the actions of the agency which has wasted the resources of the U.S. Government and cluttered up the court system with meaningless cases—cases made for the mere purpose of appearing busy so as to justify the budget of BATF.

MISMANAGEMENT OF BATF

There has been woeful mismanagement of the BATF, and the Reagan administration has recognized that mismanagement, for which we applaud them. However, their proposed solution has been to abolish the BATF as an entity and to transfer the functions—along with all the firearms enforcement agents and some of the management—to the Secret Service. It has been our position that so long as the same agents are enforcing the same law under the same Treasury Enforcement Office, it makes no substantive difference whether those agents carry badges marked "ATF" or "Secret Service."

What is truly needed is substantive change, and while there are elements of substantive change in the reorganization proposal, they are basically superficial.

REVIEW OF ADMINISTRATION REORGANIZATION PLAN

When I testified 2 weeks ago, you asked that we carefully review the administration's plan for reorganizing this function of the Treasury Department and to come back to you to give our opinion as a group particularly affected by this transfer, as to whether or not it should be carried out.

As you requested, we have reviewed the testimonies of Deputy Treasury Secretary R. T. McNamar and Assistant Treasury Secretary for Enforcement and Operations John Walker in careful detail. We have discussed these matters among ourselves, with other knowledgeable individuals in Washington, and with the legislative policy committee of NRA, which called a special meeting primarily to discuss this topic.

We reviewed the fact that when this transfer was first reported it was reviewed by the news media as a "great victory for the NRA," and a "political payoff of the Reagan administration to the NRA." Despite the fact that it is not, and we did not consider it such, that was the public perception of the transfer.

Predictably, the advocates of prohibitive firearms laws immediately condemned the transfer and began making speeches and writing editorials against it. As details of the plan were reported, Treasury administration spokesmen attempted to reassure the opponents of private gun ownership that gun laws would be enforced with as much, or more, vigor than in the past, and with as many, or more, agents than in the past.

ADDITIONAL MANPOWER TO SECRET SERVICE FROM BATF

Reduced to its simplest elements, the idea behind the reorganization is that the Secret Service would be given additional manpower from BATF to supplement present manpower when additional trained agents are needed for protective duty, as in the 1980 election when there were a dozen or more presidential primary candidates. At the same time, since Secret Service is widely reported to need additional duties to occupy its agents during nonpresidential election years, the transfer of the BATF firearms enforcement responsibilities to Secret Service would give Secret Service agents something to do. As I testified 2 weeks ago, we were not made comfortable by giving firearms enforcement responsibilities to any agency which needed something to do. That was, and is, the greatest single problem within BATF—too many agents with too little to do.

BENEFITS OF TRANSFER OF BATF

However, there is an additional element now being discussed as one of the benefits of the transfer, the supposition that the merger will "enhance intelligence-gathering capabilities" of the Secret Service. Last week, Deputy Assistant Secretary Robert Powis stated as an example of such enhanced intelligence capability the fact that any assassin using a gun would have to obtain a gun. This linkage disturbs us greatly, and does not, in our opinion, bode well for the attitude of Secret Service if it chooses to regulate the commercial sale of firearms as if it were dealing primarily with potential assassins and sources of assassination weapons.

As I testified before, we are concerned by the fact that the lawful and normal commerce in firearms should not be delegated to an agency which is primarily a law enforcement organization—no more than interstate truckers should be regulated by the FBI. Yet in recent testimonies the Treasury Department has stated that the Secret Service is purely a law enforcement organization. I know of no other law enforcement agency in Government which is responsible for licensing a commercial activity.

In his February 3 testimony, Deputy Secretary McNamar stated that the "Treasury's management review of AFT revealed deficiencies, largely of an institutional nature * * *." It is those deficiencies, Mr. Chairman about which the NRA has been complaining; we do not feel that deficiencies involving serious abuses of American citizens can be resolved, or should be resolved, simply by changing the name on the door and issuing new badges.

On the other hand, the management review apparently discovered precisely the type of problem to which we have addressed ourselves in the past—an excessive number of agents for the job to be done. As an example, that study showed offices set up primarily for firearms regulation had produced few or no firearms cases over an 18-month period. Obviously those agents in those offices are not needed.

CASES HANDLED BY BATF

While we applaud the Administration for recognizing such obvious waste, it should be noted that according to Deputy Assistant Treasury Secretary Powis' management study of BATF during fiscal year 1981, there was only 1.6 firearms cases per year per agent recommended for prosecution. From our own research, we are well aware that a high percentage of these cases were of poor quality, and entirely inappropriate from the standpoint of reducing crime.

Possibly because of an eagerness to placate the concerns of the advocates of prohibitive firearms laws, the Treasury Department has made statements which have reassured our opponents—and assured us—that there will be no substantive change in the agency's performance under Secret Service. As we have become convinced that the Nation's gun owners would be worse off as a result of this transfer, our opponents have also become similarly convinced. We are told that in private conversations the spokesmen for Handgun Control, Inc., which originally opposed the transfer, now favor it. The day the National Coalition to Ban Handguns testified before your committee they spoke in favor of it. Just last Thursday, when Senator Edward M. Kennedy testified in favor of gun control and his anti-gun-owner bill, he also stated that he now supports the transfer of BATF to Secret Service.

In short, Mr. Chairman, either intentionally or otherwise, the Treasury Department has now convinced virtually all of the principals who are concerned about how firearms laws will be enforced that there will be more enforcement, not less. And we have seen altogether too much of the kind of firearms enforcement allowed under the Gun Control Act of 1968. Contrary to common belief, there is nothing in that law which directly addresses the criminal misuse of firearms, with the sole exception of a seldom-used penalty enhancement provision. The rest of the provisions of the Gun Control Act are purely regulatory in nature; they should be administered by a regulatory agency and not by a criminal law enforcment organization.

RECORD OF U.S. FIREARMS OWNERS

America's firearms owners are overwhelmingly careful, law-abiding citizens; the manufacturers, distributors and dealers who serve them mirror the attitude and outlook of their customers. The best evidence is the fact that by all counts only about two-tenths of 1 percent of all firearms are involved in any type of criminal misuse or accidental mishap in any given year. For such honorable citizens to be monitored and regulated by a law enforcement agency which is accustomed to dealing with terrorists and violent criminals, and trained to suspiciously observe every individual as a potential assassin, is to invite even greater abuses than we have seen in the past, and to invite even greater distrust between the American firearms fraternity and the Federal agency which is responsible for regulating this legitimate commercial and recreational activity.

It is because of the incapability of it that the Treasury Department itself has rejected a reorganization of BATF that will put part of it in Customs, which would partially be done by their reorganization plan. It has been said that this reorganization is the Reagan administration plan. Actually, according to documents we have recently received, this is actually the third Reagan administration plan proposed in the last year. According to a February 18, 1981 letter from Treasury Secretary Donald Regan to OMB Director David Stockman, OMB proposed that BATF be disestablished and put back in IRS, from which it came in 1972. Treasury rejected that proposal, then conducted a study dated June 1981 which determined that BATF should remain an independent agency, and that the agency and its functions specifically should not be transferred to either IRS or Customs. Because of the obvious dissimilarity of functions with Secret Service that study did not even include any consideration of a transfer to Secret Service.

STUDY AND REVIEW

I would like to submit copies of those documents to the committee and read the conclusions of the June 1981 study.

Senator ABDNOR. We will include those in the record.

[The documents follow:]

A REVIEW

ORGANIZATIONAL LOCATION
OF THE
BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

Executive Summary

Three organizational alternatives were analyzed to determine the costs, savings, and feasibility for the Bureau of Alcohol, Tobacco and Firearms (BATF).

Option 1 - Merge BATF with the Internal Revenue Service (IRS)

A net annual savings of approximately $1.4 million could result from this merger. However, the feasibility of this merger is not very desirable because of the dissimilarities in missions, functions, philosophy, workload, personnel, skills, and expertise which were the primary reasons influencing the decision to establish the Bureau in 1972. It is unlikely any effectiveness gains could be achieved through a merger of BATF and IRS. In fact, it is more likely that a decrease in operational effectiveness would occur.

Option 2 - Merge BATF with the U.S. Customs Service

A net annual savings of approximately $1.7 million could result from this change. However, the differences and lack of similarity between BATF and Customs are as evident, if not more so, than between ATF and IRS.

Option 3 - Regional Realignment of BATF

Realignment of BATF regional structure to five regions from seven regions now used to manage the revenue and administrative support programs and the four regions used to manage law enforcement programs. An estimated net annual savings of $.4 million and $1.6 million in FY 1982 and FY 1983, respectively, would be realized while requiring a one time net expenditure of less than $30,000 in FY 1981. This option offers the most potential for absorbing budget cuts and maintaining an acceptable level of program effectiveness.

Introduction

As part of the FY 82 Budget Cycle the OMB suggested that administrative savings may be gained if the Bureau of Alcohol, Tobacco and Firearms (BATF) were eliminated and its functions transferred to the Internal Revenue Service (IRS). While the Department of Treasury is interested where possible in making savings in the administration of its programs, it was felt that such a significant organizational change should not be made without a thorough review of the matter. Accordingly, it is the purpose of this study to make that review.

The study will include an examination of the need for an independent bureau structure to carry out the BATF programs to see if the requirements that existed in 1972 when the bureau was established still exist today. Additionally, the potential savings/costs and feasibility of three organizational alternatives to the current bureau structure will be considered, namely: (1) merging BATF with the Internal Revenue Service; (2) merging the BATF with the U.S. Customs Service; and (3) making the current BATF organizational structure more efficient by reducing the regional structure (five region realignment).

II Mission and Organization of the Bureau of Alcohol, Tobacco, and Firearms

The Bureau of Alcohol, Tobacco and Firearms was established by Treasury Department Order No. 221, effective July 1, 1972. The order transferred the functions, powers, and duties derived from laws relating to alcohol, tobacco, firearms, and explosives from the Internal Revenue Service to the new Bureau. On December 5, 1978, Treasury Department Order No. 120-1 assigned to the Bureau responsibility for enforcing 18 U.S.C. Chapter 114 relative to interstate trafficking in contraband cigarettes.

Bureau Headquarters are located in Washington, D.C., but most of its personnel are stationed in field locations where operational functions are performed. The Director is appointed by the Secretary of the Treasury and is under the supervision of the Assistant Secretary (Enforcement & Operations). Charts one, two and three depict the current organizational structure of the BATF.

The Bureau is responsible for enforcing and administering firearms and explosives laws, as well as those covering the production, use and distribution of alcohol and tobacco products.

The objective of the Bureau's programs is to maximize voluntary compliance with these laws, and to minimize both willful and involuntary violations of the laws. To achieve these goals, the Bureau is divided into two basic functions: criminal enforcement and regulatory enforcement. The objectives of the criminal enforcement activity are to eliminate illegal possession and use of firearms and explosives; suppress traffic in illicit distilled spirits; suppress interstate trafficking in contraband cigarettes; and assist State and local law enforcement agencies in reducing crime and violence. The regulatory enforcement activity determines, and assures full collection of, revenue due from the legal alcohol and tobacco industries; fulfills the Bureau's responsibility in the prevention of commercial bribery, consumer deception, and other improper trade practices in the distilled spirits industry; assures that categories of persons prohibited by law from manufacturing, exporting or dealing in firearms and explosives do not obtain a license or permit; assures that storage facilities for explosives are safe and secure, and that explosives are properly stored in such facilities to avoid hazard to the public; and assures that the audit trail is preserved to permit the tracing of firearms used in the commission of crimes and full accountability for explosive materials. The President's Budget for FY 82 provides the BATF with an average employment of ________ and funds totalling $150.6 million to carry out these programs.

III Examination of the Need for an Independent Bureau Structure

The separation of BATF from IRS, and establishment of BATF as a separate bureau, was accomplished in 1972 under Secretary Connally. This move was undertaken in order to provide a direct chain of command for managing substantial new law enforcement responsibilities imposed on IRS by Congress in 1968 and 1970. Parallel with the establishment of BATF as a separate agency in Treasury the Secretary created the position of Assistant Secretary for Enforcement, Tariff and Trade Affairs, and Operations. This new Assistant Secretary position was established in response to Congressional and Warren Commission concern that the Secretary be kept "fully informed regarding all significant developments relating to Presidential protection" and the Department's concern that its law enforcement functions be more closely supervised. Since BATF was a very vital part of the Department's enforcement effort, a conscious decision was made to move BATF out of IRS to provide a coordinated law enforcement operation through the Office of the Assistant Secretary. The sensitivity of BATF's criminal enforcement activities, because they involve delicate international situations (Irish Republican Army, Nicaragua, El Salvador) as well as close scrutiny by pro and con gun interest groups, necessitate close monitoring by the Department, which could not be done if BATF were placed in IRS.

The IRS management structure, highly-decentralized and oriented strongly toward revenue collection, does not permit the tight management essential in law enforcement operations. For example, when BATF was a division in IRS, the Director of the Alcohol, Tobacco, and Firearms Division of IRS in Washington could not issue orders directly to BATF Division officers in the field, who were under the direct supervision of the IRS regional commissioners. Instead the BATF Division Director was required to prepare correspondence to be approved by the IRS Assistant Commissioner (Compliance) and then sent from the IRS Commissioner to the regional commissioners, who in turn passed orders on to BATF Division personnel in their regions.

The attached Chart (4) shows the difference in authority relationships between the IRS organizational structure and the current BATF structure. In the IRS structure there are six links in the chain. In the BATF structure there are only three. Moreover, in the IRS structure the ATF Division Director had only functional authority over field operations. Whereas, in the Bureau structure, the Director has line authority over field operations.

Additional factors which led to the establishment of BATF as a separate agency in Treasury included the following:

- an increasing crime rate and growing public concern over crime and violence (a situation which exists today)
- a mismatch between the IRS mission of individual and corporate income tax collection and the ATF mission of excise tax collection and law enforcement (a situation which has been exacerbated by the years of separation) and an inconsistency and incompatibility of approach, skills, and personnel required to achieve mission objectives
- pressure by the taxpaying industries for more direct access to and responsiveness from decisionmaking personnel than was possible in the larger, more decentralized IRS organization which is still true today, e.g., electronic funds transfer, wine labelling, etc.)

A 1971 Treasury Department report recommending the establishment of ATF stated the following rationale for the establishment of an independent bureau structure:

"1. The new law enforcement missions are unrelated to the primary revenue collection mission of Internal Revenue Service.

2. The enforcement activities of ATF are somewhat incompatible with the IRS tax administration approach. The permissive side relies heavily on a voluntary self-assessment in fulfilling its revenue collection mission. By contrast the enforcement function must take the police-type approach.
3. Law enforcement now takes place in a constantly changing environment calling for a type of single-minded, authoritative leadership which is not available in IRS due to its overriding revenue mission and orientation. . . ."

Thus, it appears because of the need for direct chain of command for its law enforcement mission and because of its sensitive regulatory programs that a bureau structure is the best management structure for the BATF.

IV. Organizational Alternative

A. Merger with Internal Revenue Service

1) Mission and Organization

INTERNAL REVENUE SERVICE

The Office of the Commissioner of Internal Revenue was created by the act of July 1, 1862 (12 Stat. 432; 26 U.S.C. 3900).

The Internal Revenue Service (IRS) is responsible for administering and enforcing the internal revenue laws, except those relating to alcohol, tobacco, firearms, and explosives. The IRS mission is to encourage and achieve the highest possible degree of compliance with the tax laws and regulations and to conduct itself so as to warrant the highest degree of public confidence in the integrity and efficiency of the Service. Accomplishment of this mission involves communicating requirements of the law to the public, assisting taxpayers in complying with the laws and regulations, and taking those enforcement actions necessary for fair, effective, and impartial tax administration.

Basic IRS activities include provision of taxpayer service and education; determination, assessment, and collection of internal revenue taxes; determination of employee plan qualifications and exempt organization status; and preparation and issuance of rulings and regulations to supplement the provision of the Internal Revenue Code. The sources of most revenues collected are the individual income tax and the social insurance and retirement taxes; other major sources are the corporation income, excise, estate, and gift taxes.

Organization

IRS organization is designed for maximum decentralization, consistent with the need for uniform interpretation of the tax laws and efficient utilization of resources. There are three organizational levels: the National Office, the Regional Offices, and the District offices and Service Centers. Districts may have local offices, the number and location of which are determined by taxpayer and IRS needs. Charts six, seven, and eight depict the organizational structure of the IRS.

Headquarters Organization

The National Office, located in Washington, D.C., develops nationwide policies and programs for the administration of the internal revenue laws and provides overall direction to the field organization. Assisting the Commissioner of Internal Revenue are a Deputy Commissioner and eight Assistant Commissioners, each in charge of a functional area. These functional areas are Resources Management; Taxpayer Services and Returns Processing; Compliance; Data Services; Employee Plans and Exempt Organizations; Inspection; Planning and Research; and Technical. Legal services are provided by the IRS Chief Counsel, who is an Assistant General Counsel of the Treasury Department. There is also an Assistant to the Commissioner for Public Affairs, an Assistant to the Commissioner for Equal Opportunity and a Taxpayer Ombudsman. The National Computer Center, Martinsburg, West Virginia, and the Data Center, Detroit, Michigan, are also assigned to the National Office.

Field Organization

Most of the IRS personnel and activities are assigned to field installations.

Regional Offices: There are seven Regional Offices, each headed by a Regional Commissioner, which supervise and evaluate the operations of District Offices and Service Centers. The Regional Commissioner is assisted by five Assistant Regional Commissioners. An appeals activity, headed by a Regional Director to hear disputes from taxpayers, is assigned to the Regional Office. Also located there, but not supervised by the Regional Commissioner, is the Regional Counsel who reports to the Chief Counsel, and Regional Inspector who reports to Assistant Commissioner (Inspection) in the National Office.

District Offices: There are 58 Internal Revenue Districts, each administered by a District Director. Districts may encompass an entire State, or a certain number of counties within a State, depending on population. Programs of the District Offices include taxpayer service, examination, collection, criminal investigation, resources management, and, in some districts, employee plans and exempt organizations. Functions performed are: assistance and service to taxpayers, determination of tax liability by examination of tax returns, determination of employee plan qualifications, collection of delinquent returns and taxes, and investigation of criminal and civil violations of internal revenue laws (exept those relating to alcohol, tobacco, firearms, and explosives). Directors are responsible for deposit of taxes collected by the District and for initial processing of original applications for admission to practice before IRS and renewal issuances for those practitioners already enrolled. Local offices may be established to meet taxpayer needs and IRS workload requirements.

Service Centers: Also under the supervision of the Regional Commissioner are 10 Service Centers located in Austin, Texas; Chamblee, Georgia; Covington, Kentucky; Kansas City, Missouri; Andover, Massachusetts; Ogden, Utah; Fresno, California; Memphis, Tennessee; Brookhaven, New York; and Philadelphia, Pennsylvania. Each Service Center processes tax returns and related documents and maintains accountability records for taxes collected. Programs include the processing, verification, and accounting control of tax returns; the assessment and certification of refunds of taxes; and the administration of assigned examination, criminal investigation and collection functions. The President's Budget for FY 82 provides the IRS with an average employment of________ and funds totalling $_________ to carry out these programs.

2) BATF Compatibility with IRS

In considering the proposed merger of ATF with IRS, the following criteria for evaluating alternatives appear to include all logical reasons for proposing a merger:

- compatibility of mission and functions
- compatibility of processes and methodologies
- compatibility of external relationships
- compatibility of internal relationships

- compatibility of personnel, skills, and expertise
- improved operational effectiveness
- substantial savings and efficiencies

Mission and Functions

The primary functions derived from the ATF mission are:

- protection of the public safety through law enforcement programs and support to State, local, and Federal law enforcement in their fight against crime and violence
- protection of the excise tax revenues and regulation of sensitive commodities whose misuse represent a threat to the public.

This mission is unique in Treasury. Guns, explosives, and arson are tools of violent and organized crime. ATF uses its regulatory and investigative capabilities for direct and high priority support to State and local law enforcement in their efforts against violent crime.

The IRS mission is basically to collect revenue. It does not regulate industries in the sense that ATF regulates the alcohol industry and to a certain extent the firearms and explosives industries. IRS enforcement efforts are for the most part directly revenue related involving fraud and white-collar crime - and, only incidentally, violent criminals.

In summary, the mission and functions are dissimilar and incompatible.

Processes and Methods

The processes and methods which an organization uses to achieve its objectives are derived from its mission.

ATF has direct supervision and onsite interaction with the industries it regulates. ATF criminal investigative work includes extensive undercover and involvement with violent criminals, organized crime, street gangs, hate groups, professional international gun runners, etc. ATF emphasizes close coordination with other Federal, State, and local law enforcement and revenue agencies.

IRS emphasizes voluntary compliance and achieves this end by the use of post audit techniques, selective law enforcement programs, and intensive use of automation.

The processes and methods employed by the agencies are different and unique; a natural reflection of the dissimilar organizational goals and missions.

External Relationships

External relationships are also derived from an organization's mission and are a further defining characteristic. These relationships also help determine the geographic distribution of the organization's work force.

The ATF law enforcement mission requires close interaction with virtually every law enforcement agency in the country with particular emphasis on State and local. The predominant occurrence of violent crime in the major cities results in the concentration of ATF criminal investigations in cities. ATF tax administration and regulatory functions deal with a small universe of taxpayers more geographically concentrated in certain areas of the country, e.g., alcohol producers in the mid-West and wine producers in the West.

By contrast the IRS deals with every taxpayer in the country from the individual household to the giant corporation. Consequently their work force is distributed throughout the country with a large contingent in Headquarters managing the huge organization.

The organizations vary greatly in the nature of the relationships, the agencies with which they interact, and the universe and location of the taxpayers.

Internal Organization

While employing a regional structure, ATF is a highly centralized organization. It was purposely structured that way by the Department to insure close coordination and control of the law enforcement function. Programs, policies, and strategies are developed and controlled at the Headquarters level and executed in the field. Criminal enforcement is currently configured in a four region structure.

On the other hand, IRS is a highly decentralized organization with seven regional offices. See Appendix A for a description of the IRS mission and structure.

ATF is dissimilar to IRS both in terms of its Headquarters/regional relationship and its regional alignment. In the event of a merger, savings to be gained by the changeover to the four region alignment would be lost. Instead additional costs would be incurred by the increase in ATF regions required to conform with the IRS structure.

Personnel, Skills, and Expertise

The personnel, skills, and expertise an agency requires are determined by its mission.

ATF requires skilled investigators capable of dealing with the violent criminal and highly specialized and versatile inspectors with a detailed knowledge of complicated industries and commodities, and a background in accounting and auditing. The mix of personnel in ATF is heavily weighted toward criminal enforcement personnel as a result of the workload imposed by an increasing crime rate and the smaller number and concentration of taxpaying industries in certain geographic areas.

IRS personnel are predominantly accountants, auditors, and technical personnel with comparatively fewer criminal investigators.

There is very little overlap in the categories of personnel and specialists employed by the two agencies. At the same time there is a great disparity in the numbers and percentage of personnel in each category, their skills, background, and expertise. In essence, there is virtually no interchangeability among the occupational specialties.

Operational Effectiveness

A paramount concern in any reorganization proposal would be increasing effectiveness of the agencies involved. However, any gains in effectiveness can only be achieved through similarity of the factors outlined above, i.e., similarity of mission, functions, philosophy, workload, processes, methods, external relationships, geography, personnel, skills, and expertise. In view of the lack of congruence in these areas, it is unlikely that any effectiveness gains would be achieved through a merger of ATF with IRS. In fact, it is more likely that a decrease in operational effectiveness would be realized between the agencies and in the long term as a result of the mismatch of missions.

Savings and Efficiencies

BATF's proposed FY 82 budget is $150.6 million. A merger with IRS would save $1.7 million with an offsetting cost of $0.4 million annually. The net annual savings would amount to approximately $1.4 million (See Appendix A, Costs/Savings of Merger with IRS). The savings occur primarily as the result of the elimination of supervisory personnel in the administrative areas. Also, this estimate assumes that there will be no RIF costs and that all ATF stationery and publications will be used until depleted.

3) Summary BATF merger IRS

In summary a review of merging BATF with IRS finds:

- a mismatch and incompatibility of mission and functions
- different processes and methodologies to achieve mission objectives
- a varying universe of users of services and cooperating organizations
- unique internal organizational structures and relationships
- diverse personnel, skills, and expertise
- potential for decreases in organizational effectiveness
- a potential savings of only $1.4 million.

B. Merger with the U.S. Customs Service

1) Mission and Organization of the U.S. Customs Service

The mission of the United States Customs Service is to collect the revenue from imports and to enforce Customs and related laws. As the principal border enforcement agency, Customs enforces the provisions of the Tariff Act of 1930 as well as 400 laws for 40 other Government agencies. The Customs Service operates in a dynamic environment, characterized by an ever increasing workload, an increasingly wide and more complex range of responsibilities, and a highly professional workforce.

The Customs Service is a relatively large and a widely dispersed organization, performing a variety of functions which impact the traveling public, the import and trade community, and the health and welfare of American business and the general public. The FY 1980 budget was $465 million, which is heavily labor intensive with other 14,000 employees.

During FY 1980, Customs collected $8.2 billion in duty and taxes and processed $260 billion worth of imports representing over four million formal entries. In addition, Customs cleared more than 269 million persons entering the United States, more than 815 million vehicles, 161,462 vessels and 445,540 aircraft. This workload involved the processing of 16.9 million Customs declarations. Some 46.5 million foreign mail parcels were processed last year requiring more than 2 million informal main entries.

Customs is strongly committed to strict enforcement of laws and regulations. During FY 1980, Customs seized illicit drugs, prohibited articles and undeclared merchandise valued at more than $3 billion. The more than 21,500 drug seizures included: 4,743 pounds of cocaine, 43.0 million units of poly-drugs, 1,180 tons of marijuana and 268.7 pounds of heroin.

Organization

The Customs Service is comprised of over 300 offices located throughout the United States and at various overseas locations. A major reorganization in 1965-1966 resulted in a significant decentralization of management control by establishing nine regional offices, overlaying a regional structure upon existing district offices which previously had reported directly to Headquarters. Today, there are 46 districts which supervise the activities of 300 ports of entry located at airports, seaports and land border crossings. Additionally, Customs has attaches and representatives at 8 foreign offices, Customs military advisors in 4 countries and public administration advisors in 6 countries. Chart seven depicts the organizational structure of the U.S. Customs Service.

Customs is a labor intensive organization. Over 6,000 positions are dedicated to the inspection and control of persons and cargo. Nearly 4,000 positions are associated with the entry classification and valuation of merchandise. Tactical interdiction and investigative activities represent 2,500 positions. Washington Headquarters includes less than 10 percent of Customs total staffing. Customs officers (inspectors, import specialists, patrol officers and special agents) are noted for their "can do" attitude and their ability to react decisively to whatever situation confronts them.

During the last two years, Customs has emphasized several management initiatives to manage the organization and to improve decision-making ability regarding resource allocation. A Management By Objectives system has been implemented nationwide to measure organizational and individual effectiveness. Senior managers throughout the country participate extensively in policy formulation and priority determination. New programs are developed and tested according to a logical and systematic process, and on-going programs are evaluated for efficiency and effectiveness. Finally, a broad range of management information is being collected, analyzed and exchanged for use in decision-making.

Mission and Functions

The mission of the United States Customs Service is multifaceted, involving the collection of revenue from imports and the enforcement of Customs and related laws. The Tariff Act of 1930 mandates Customs to:

- Control, regulate and facilitate the movement of carriers, persons and commodities between the United States and other nations;
- Protect the American consumer and the environment against the introduction of hazardous and noxious products into the United States; and protect American industry and the American worker against unfair competition from foreign manufacturers and producers;
- Assess, collect and protect revenue accruing to the United States from duties, taxes and fees incident to international traffic and trade;
- Detect, interdict and/or investigate:
  - smuggling and other illegal practices designed to gain illicit entry into the United States or prohibited articles, narcotics drugs and other contraband;
  - fraudulent activities calculated to avoid payment of duties, taxes and fees or to evade the legal requirements of international traffic and trade; and
  - illegal international trafficking in arms, munitions and currency.

The activities performed by Customs in executing these responsibilities call for increasingly sophisticated operational and enforcement techniques and the application of a wide variety of skills and disciplines. Utilization of modern communications and computer technology enables Customs inspectors and import specialists to efficiently and effectively process the growing numbers of travelers and volume of merchandise entering the United States each year. Built-in safeguards and follow-up audits assure that facilitation of merchandise processing does not increase the opportunity for fraud.

Application of state-of-the-art technology and equipment, including operation of sophisticated enforcement communications systems, assures integration of inspection and control; air, land and sea patrol; and investigative functions in an all-out attack on smuggling of narcotics and other prohibited articles and on frauds against the revenue. This effort involves coordination of such diverse activities as classification and valuation of merchandise; inspection of passenger baggage and cargo; technical investigation; aircraft and watercraft operation; laboratory analysis; and police type patrol.

Other Agency and International Relations

Customs has an extensive involvement with other Government agencies, with outside commercial and policy organizations and trade associations, and with international organizations and foreign customs services. In carrying out our own revenue collection and enforcement functions, Customs maintains working relationships with numerous Agencies including the International Trade Commission; the Internal Revenue Service; the Bureau of Alcohol, Tobacco and Firearms; the Department of State; the Federal Bureau of Investigations; the Drug Enforcement Administration; the Coast Guard; the Federal Aviation Administration; and state and local officials. As a consequence of our inspectional presence at ports of entry Customs has been charged with responsibility for numerous enforcing, regulatory, controlling and reporting functions for other Agencies, most notably the Immigration and Naturalization Service, the Public Health Service and the Department of Agriculture.

In processing cargo, carriers and persons, Customs maintains daily contact with the public, with importers, customhouse brokers, importers' associations, freight forwarders, chambers of commerce and the media.

Customs emphasis on coordination and cooperation carries over into our ever-growing international involvements. Customs is a member of the Customs Cooperation Council in Brussels, working for the simplification and harmonization of worldwide customs procedures, and actively participates in the Interagency Committee to promote a unified United States position in international matters. Customs has 8 foreign offices for the purpose of providing liaison with foreign customs services and advice to potential exporters to the United States, and for conducting foreign inquiries related to fraud investigations and currency or neutrality violations. Customs meets regularly with Canadian and Mexican officials to increase cooperation, exchange smuggling and interdiction information and to promote better bi-lateral relations.

The President's Budget for FY 82 provides the U.S. Customs Service with an average employment of_______and funds totalling $__________to carry out its mission.

2) BATF Compatibility with U.S. Customs Service

Proposal to Merge ATF and Customs

It has also been proposed that ATF and Customs be merged. The differences and lack of similarity between ATF and Customs are as evident, if not more so, than between ATF and IRS.

The Customs' mission is to collect duties on imported goods. Its enforcement program is largely a uniformed border control function and a very small, mostly fraud oriented, investigative capability. ATF collects taxes from domestic industries; and has a very large criminal investigative function aimed at violent crime and [illegible] close support to domestic law enforcement agencies.

Work processes and methods are dissimilar, with Customs using extensive uniformed physical supervision and very little criminal investigative activity.

External relations are totally dissimilar. Customs is almost exclusively confined to border and international traffic and travelers. ATF is domestic oriented.

Internal organization of Customs is highly decentralized. ATF is highly centralized with straight-line supervision of its criminal enforcement and regulatory functions - a necessity to control sensitive investigations and to regulate sensitive industries.

Personnel and skills of the two agencies are dissimilar. A large part of Customs is uniformed police patrol type activity versus industry specialization and criminal investigative activity in ATF.

Operational effectiveness would not be improved since the functions are so unrelated there would be very little opportunity to combine work.

Savings and efficiencies. BATF's proposed FY 82 budget is $150.6 million. A merger with the U.S. Customs Service would save $2.4 million with an offsetting cost of $0.7 million annually. The net annual savings would amount to approximately $1.7 million (See Appendix B Costs/Savings of Merger with U.S. Customs Service). The savings occur primarily as a result of the elimination of supervisory personnel in the administrative areas. Also, this estimate assumes that there will be no RIF costs and that all ATF stationery and publications will be used until depleted.

3) Summary of BATF merger with the U.S. Customs Service.

In summary a review of merging BATF with the U.S. Customs Service finds:

- a mismatch and incompatibility of mission and functions
- different processes and methodologies to achieve mission objectives
- a varying universe of users of services and cooperating organizations
- unique internal organizational structures and relationships
- diverse personnel, skills, and expertise
- potential for decreases in organizational effectiveness
- a potential savings of only $1.7 million

C. Improve Current BATF Organizational Structure (Five-Region Realignment)

To streamline operations, the Bureau of Alcohol, Tobacco and Firearms, proposes to consolidate its field structure from seven to five regions. Currently, the Offices of Criminal Enforcement and Internal Affairs are aligned in four regions, while the Office of Regulatory Enforcement, Administration, and the Chief Counsel are aligned in seven.

These configurations have resulted from organizational responsibilities, programs and related workloads which were relevant at the time ATF was formed, but which are no longer appropriate. An example of this would be the recent movement of the Bureau from joint custody to the all-in-bond program. The implementation of such programs, while increasing productivity, has shifted the geographical distribution of ATF's workload. Corresponding transfers of personnel have been necessary to accommodate these shifts.

In view of these changes, the Bureau believes that it should now realign into a uniform five-region structure. (See Appendix C, BATF Proposed Five-Region Realignment). In addition to enhancing organization uniformity, the proposed alignment would be consistent with the standard federal region boundaries.

Under this realignment, the Cincinnati and Philadelphia regional offices would be closed, thereby placing regional officials at the most strategic locations for ATF's current and future program efforts.

This realignment would result in the elimination of 53 positions (4 in Regulatory Enforcement, 44 in Administration and 5 in the Chief Counsel's regional offices), In addition, it would produce an estimated net annual savings of $447,498 and $1,585,532 in FY-82 and FY-83, respectively, while requiring a net expenditure of $27,230 in FY-81. As a result, the budget cuts can be absorbed largely in overhead minimizing the adverse impact on Regulatory and Criminal Enforcement.

V. Discussion and Comparison of Alternatives

In capsule form the three organizational alternatives for the BATF are:

(A) Merge with IRS (Annual Savings $1.4 million)

(B) Merge with the U.S. Customs Service (Annual Savings $1.7 millio

(C) Improve current BATF organizational structure (Five-Region Realignment, Annual Savings $1.6 million)

All three alternatives produce a similar amount of savings but the proposed mergers may result in the following drawbacks.

- Poor morale, disruption of service, and confusion: This is usually expected in the short term, however, it is not uncommon for this to become a long term problem. The creation of DEA in 1973 which stripped Customs of its narcotics investigation responsibilities remains a problem today in both DEA and Customs. The internal disruption and interagency rivalry have had an adverse impact on narcotics enforcement.
- Misinterpretation of intentions: Violent crime and concern over violent crime are increasing. The public and the law enforcement community have a high expectation of the Republican Administration to follow their tradition of a strong response against crime and violence. ATF is the Federal agency with

a tradition and legislative mandate to support State and local law enforcement in their fight against violent crime. Placing ATF in another organization may result in a misinterpretation of the commitment against violent crime.

- Industry response: The powerful and well organized tobacco, alcohol, beer, and wine industries have frequently expressed the need to have more direct access to the decisionmaking level of the organization which has taxation and oversight authority over them. The legitimate industry can be expected to express strong dissent against losing what is viewed as important status representation, access, and responsiveness from the Federal Government.
- Management, control, and flexibility: The sizes of ATF, Customs, and IRS range from small, to medium, to large. At its present size ATF is an eminently manageable organization. It is flexible and responsive. Merger with the larger organizations with their diverse missions would result in a loss of manageability and flexibility.
- Momentum: ATF has greatly improved its management, organization, and operational effectiveness over the last 2 years. These improvements can be expected to continue and gather momentum in the future. In ATF, Treasury management has at its disposal an effective law enforcement and revenue agency with a recent history of success, effectiveness, flexibility, and versatility. Certainly some of the ATF programs have opponents but those opponents will remain irrespective of organizational location.
- Violent crime: ATF has been able to effectively use its gun and explosives laws against some of America's most violent and dangerous criminals and groups - motorcycle gangs, hate groups (KKK), organized crime, etc. ATF has provided invaluable assistance to State and local police organizations. If merged with another agency, it is probable that ATF resources and priorities will be diverted to other activities.
- Departmental Control: ATF regulates sensitive commodities - alcohol, tobacco, firearms, and explosives. These commodities lend themselves to abuse and misuse. ATF's investigative activities are also sensitive and made more so by the emotionalism that surrounds these commodities. These factors require close departmental control and interaction - which will be

difficult to achieve if ATF is layered under another agency's supervision.

BATF and IRS are incompatible because of their differences in missions, functions, size, philosophies, operating procedures, internal relationships, organizational structures, and personnel and skills. For example, IRS collects approximately $650 billion income tax from corporations and individuals whereas BATF collects a considerably smaller amount of excise tax (approximately $10 billion) from only the tobacco and alcohol industry. This imbalance in the amount of revenue collection and in each agency's universe coupled with the lack of functional relationships are some of the factors that could potentially pose problems if IRS and BATF were merged together. It is our belief that IRS management would emphasize the more revenue intensive functions and BATF small revenue collection would not likely receive high priority. Also, BATF law enforcement functions are unlike any of IRS functions. In addition, the size of IRS' work force (approximately 70,000 employees) is considerably larger than BATF's work force (approximately 3500 employees).

The differences and lack of similarity between BATF and Customs are as evident, if not more so, than between BATF and IRS. Customs' organizational structure is not geared to manage BATF's workload. Customs' workforce is located along the borders, and in several cities with international airports while BATF's workforce is geographically distributed on an entirely different basis. Customs has a nine-region structure whereas BATF has a seven-region concept. Work processes and methods, external relations and personnel and skills are dissimilar. These differences would impede program effectiveness of both organizations if BATF was merged with Customs.

The Bureau has proposed to the Department a plan to establish five regions to replace the seven regions now used to manage the revenue and administrative support programs, and the four regions used to manage the law enforcement programs. Program management and administrative support at the regional level would be consolidated. This new structure would be consistent with the standard federal region boundaries established by OMB in 1974.

A paramount concern in any reorganization proposal would be increasing effectiveness of the agencies involved. However, any gains in effectiveness can only be achieved through similarity of several factors (i.e., mission, functions, philosophy, workload, processes, methods, external relationships, geography, personnel, skills, and expertise). In view of the many dissimilarities between BATF, IRS, and Customs, it is unlikely that any effectiveness gains could be achieved through a merger of BATF with IRS or Customs. In fact, operational effectiveness could be decreased if such a merger did occur.

VI. Conclusions

Reorganization is not a panacea and can be a costly undertaking in terms of efficiency and effectiveness. Reorganization for reorganization's sake should not be done. There should be clear and identifiable reasons for reorganization, such as substantial economies or improved operational performance. BATF regulates sensitive commodities - alcohol, tobacco, firearms, and explosives. These commodities lend themselves to abuse and misuse. BATF's investigative activities are also sensitive and made more so by the emotionalism that surrounds these commodities. These factors require close departmental control and interaction - which will be difficult to achieve if BATF is layered under another agency's supervision.

The main reason for merging the BATF into the IRS or the U.S. Customs Service appears to be administrative savings. The Bureau's proposal for a five-region realignment will produce similar savings without many of the disadvantages identified with the merger. Based on this analysis it is recommended that the BATF remain a separate bureau and that the proposed five-region realignment be approved.

ADVANTAGES TO REORGANIZATION

Mr. KNOX [reading].

> Reorganization is not a panacea and can be a costly undertaking in terms of efficiency and effectiveness. Reorganization for reorganization's sake should not be done. There should be clear and identifiable reasons for reorganization, such as substantial economies or improved operational performance. BATF regulates sensitive commodities—alcohol, tobacco, firearms and explosives. These commodities lend themselves to abuse and misuse. BATF's investigative activities are also sensitive and made more so by the emotionalism that surrounds these commodities. These factors require close departmental control and interaction, which will be difficult to achieve if BATF is layered under another agency's supervision.
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Senator ABDNOR. That was June 1980?

Mr. KNOX. This is June 1981, a document from the Department of the Treasury. It is a draft. I am assuming anything is marked "draft" until such time as it has been officially approved.

Senator ABDNOR. You quoted Secretary Regan.

Mr. KNOX. The letter of February 18, 1981, from Secretary Regan to the OMB Director, David Stockman, says the Department will not accept OMB's unilateral decision that the Bureau of Alcohol, Tobacco, and Firearms be disestablished and merged with the Internal Revenue Service. I am suggesting that was the first plan. Perhaps in response to that, this second document, which is entitled "A Review of Organizational Location of the Bureau of Alcohol, Tobacco, and Firearms," dated June 1981 was presented or was prepared. And this one addresses both Customs and IRS. It is interesting to me that while it talks about the similarity between Customs duties and BATF's duties that now a section of BATF's duties would be transferred to Customs under this proposal.

Mr. Chairman, the National Rifle Association is strongly opposed to the transfer to Secret Service as most recently proposed and planned by the Treasury Department.

We continue to note with dismay that there have not been any efforts made to root out the elements within the agencies who have perpetrated the kinds of offenses and abuses which we have reported to you and other congressional committees in the past. We urge that if the agency stays in place that there be a major effort to retain those individuals who have shown proper respect for the Constitution and the rights of American citizens and that those persons be dismissed who have not.

Finally, because the reorganizational plan called for the elimination or dispersing of much of BATF's top management, most of which has proved incompetent through congressionally noted failure to properly supervise its agents, or to hold them accountable for abuse, we urge that you insist that any freeze on the transfer be coupled with a demand that BATF's top management be replaced with managers who will hold their agents accountable for their actions.

For the record, Mr. Chairman, we take no position concerning matters outside the purview of the NRA but within BATF. I am specifically referring to tobacco enforcement and enforcement of the alcohol laws. What actions you might take to insure what your committee determines to be proper enforcement in these areas, regarding both funds and personnel, are of no import to the NRA. Nor do we have any concerns about the number of personnel or amount of funds which the Congress deems necessary to authorize the agency to devote to their area of arson.

NRA OPPOSITION TO TRANSFER OF BATF TO SECRET SERVICE

In summary, Mr. Chairman, and in direct response to your earlier questions, the NRA opposes the transfer of BATF to Secret Service. But we urge that there be a thorough replacement of top management, immediate passage of the McClure-Volkmer Firearms Owners Protection Act, and the enactment of strict agency policy guidelines to ensure that the types of abuses law-abiding American firearms owners have been subjected to in recent years will never be allowed to occur.

Thank you again for this opportunity to present the views of the National Rifle Assocation.

Senator ABDNOR. Thank you, Mr. Knox.

CUTBACK IN GUN REGULATIONS

I gather you think that the number of regulations and gun regulatory section of the BATF could be cut back in numbers. How many do you think it could be reduced by?

Mr. KNOX. We haven't looked at it in that type of detail, but we know they could be substantially reduced without the slightest effect on firearms-related crime.

As an example, sir, in 1964, thereabouts, there were then, according to a report from the Treasury Department to Senator Dodd, some three or four main areas of activity in the firearms enforcement areas of responsibility of BATF. There was a considerable outcry against that, blaming the agency's "nonaction"—if I may use that word—blaming the agency's nonaction to these areas as the cause or related to the high involvement of firearms in crime. It was at that time, as you well recall, there was a great push for additional Federal firearms laws. By 1968, when the Gun Control Act was written, there were some 214 Federal agents of the then Alcohol, Tobacco and Tax Unit of the Internal Revenue Service involved in firearms-related activities. In 1972, when the BATF was established as an independent bureau, there were then in the neighborhood of 800 agents. Today there are 1,500 agents, including the regulatory agents. I believe they are called 1811's.

INCREASE IN FIREARMS-RELATED CRIMES

We have seen this great growth in BATF but we have not seen a reduction in firearms crime or firearms-related crime. In fact, there has been roughly a doubling of firearms-related crime in the last 12, 13 years since the gun law went into effect.

Now I don't know what the proper number is, but I do know that what is being done is not addressing the problem and cannot, in my opinion, properly address the problem because firearms crimes, as a typical robbery using a gun, is not a Federal function. It is outside of the Federal area entirely. Accordingly, when the Congress has become disturbed, as it naturally should be, about this area, the solution has been to go into the few areas of involvement of the Federal Government in these local criminal problems and throw more money and more agents into trying to reduce these types of activities. In fact, what has happened is that the agents have so few areas that directly impact on criminality and they have a Justice Department limitation upon making any cases in which there are local violations or violations of State law that they can't address the area of someone who holds up a Seven Eleven store with a handgun even if he has numerous prior criminal convictions. They can't address someone holding up a bank with a machine gun, although machine guns have been held in violation of law since 1935. Lacking that authority to directly address the problem they have used that excess of agents to regulate those people who are involved in proper and normal "traffic" in firearms, that is, commercial activities or recreational activities. And they have made case after case against people who have no prior conviction and who have committed only technical violations at worst. They have been elements in the offense; that is, they create the offense.

UNDERCOVER ACTIVITIES OF BATF AGENTS

I have had so many people tell me that a BATF agent would come in undercover and try to get him to sell a gun illegally. The person identifies himself as being out of State. Then he says I will give you $200 for this $100 gun, I will give you $400, I will give you $600. In one case they went to $700 on a gun worth $100 or so, and the dealer told him I don't care how much money you offer me I will not sell you that gun. Then the guy said well, it's a good thing you wouldn't because I am a BATF agent.

There is great discussion today in this Senate concerning the efforts of agencies to induce people to violate the law, to test people's morality and legality. I confess I can't go into what is a proper role for the agents of this U.S. Government to get into in this area, but I don't believe that it is proper for an agency of the U.S. Government to wave around taxpayers' money in order to try to induce someone to commit an offense, and that has been happening. It has been happening because they have agents in the field who have nothing to do and who, in order to justify their continued existence, must make some kind of a case.

RECENT BATF ABUSES

Senator **Abdnor**. Do you have instances like that? Do you have instances in the last year, for instance, of that? We have been told about the abuses. It certainly occurred several years ago, didn't it?

Mr. **Knox**. Even to say several years ago, some of these cases are 3, 4 years old, they said well, that is behind us. But we have cases where within the last 6 months individuals are finally cleaning up their cases, where they are finally getting out from under lawyers' payments in order to challenge or fight back the U.S. Government, where they are only now getting their guns back. And these have been after great fights.

We have cases under appeal today where, as in the case of Boulin—Richard Boulin, a former Montgomery County police officer, who did something that the agency had told him was legal to do. When he was convicted we found out that only 2 weeks or 1 week or so before he was convicted that the agency had told Senator Hayakawa that it was proper to do exactly that of which Richard Boulin was convicted. Now the agency subsequently went the other way; they said, when raised the matter on appeal, when Boulin did, no, it is illegal, and 6 months later the present Director of BATF said no, it is legal. Now if the BATF can't make up its mind what is legal or illegal, how is some individual firearms dealer going to determine? Today Richard Boulin, because of his misunderstanding of the law, is an 11-count convicted felon. He may not vote. He may not hold certain jobs. He had never had any previous convictions. He had an exemplary record in the Army, and as a Montgomery County policeman he received various awards for his duties. And yet this man is today a convicted felon under this law and under the practices of the BATF.

I submit that if they had only those number of agents necessary to do the job that is directly related to criminal activity they wouldn't have nearly as many. How many I don't know.

Senator ABDNOR. Thank you. I think I am going to have to move on.

Mr. KNOX. Yes, sir. I appreciate very much the opportunity to be here again.

PREPARED STATEMENT

Senator ABDNOR. Thank you. Your entire statement will be made a part of the record.

[The statement follows:]

Prepared Statement of Neal Knox

NATIONAL RIFLE ASSOCIATION

Mr. Chairman, Members of the Committee, I appreciate this opportunity to again come before you to express the views of the National Rifle Association concerning the proposed transfer of the Bureau of Alcohol, Tobacco and Firearms to the Secret Service.

When I testified two weeks ago, I pointed out that the National Rifle Association has long been a critic of the 1968 Gun Control Act, and the way in which the BATF has enforced that Act. Despite our disagreement with the intent behind the federal gun laws, and the specific invitation for abuse which that law invites by its provisions and frequently vague wording, we are well aware that the law of the land must be enforced; the membership of the National Rifle Association would have it no other way, for we are an association of law-abiding citizens.

However, we have objected to the fact that the Bureau of Alcohol, Tobacco and Firearms has had far too many agents assigned to enforcement of the federal gun control law; they have more agents than there are legitimate cases to be prosecuted, by far. The result has been harassment of dealers, pointless felony prosecutions of normally law-abiding citizens who have no previous records, and who have, at worst, merely violated a technical provision of a little-understood and illogical statute.

Many of the successful prosecutions by the BATF have shocked even the most avid advocates of "gun control," both because of the methods used to obtain a conviction and because of the triviality of the actual offense -- and the seriousness of the conviction.

As examples, consider BATF's prosecution of "gun trafficking to illegal aliens" -- actually the attempted prosecution of a small storekeeper and his wife, Paul and Billi Hayes, for having sold a gun to a resident of an adjacent state, in which the actual sale was made to a bona fide resident of their state. The Hayes had been told by BATF that their sole responsibility was to sell only to residents, but they were charged with selling a gun to a resident who transferred it to a non-resident; actually both were undercover agents. The result was a felony prosecution and an acquittal after a jury deliberation of only some seven minutes, whereupon, the BATF attempted to revoke the Hayes' firearms license, using the same evidence. Again, Paul and Billi Hayes won in their lengthy fight with the U.S. Government; their license was restored. However, the stock and trade of the store, some 171 guns, were not returned although the Assistant U.S. Attorney told BATF that he was uncomfortable keeping those guns after the acquittal and the license had been restored. A year later, after a great amount of national publicity, and inquiries by Congress into the case, the Hayes' guns were finally returned.

Or consider the case of Richard Boulin, a former Montgomery County policeman. Boulin has been convicted on eleven counts of selling firearms without running those sales through his dealer records in a procedure that he too had been told by BATF was proper. The guns he sold without keeping the usual dealer records were either purchased as a private collection without benefit of his dealer license, or else had been transferred to his collection from his dealer stock. He had been told that the procedure was legal, but the BATF was unable to make up its mind. Only a week before Boulin's conviction, the Acting Director of BATF wrote Senator Hayakawa that such a procedure was legal. When Boulin's attorney brought up the Hayakawa letter on appeal, BATF reversed its position, stating that the procedure which it had declared legal was actually illegal. A few months later the Director of BATF again reversed himself, stating that there was nothing to prevent a dealer from buying and selling firearms from his personal collection. How can an individual citizen or firearms dealer be expected to understand and obey the law, even when the BATF itself cannot make up its mind? When boiled down to its simplest form, the offense for which Richard

Boulin is now an eleven-count convicted felon was "the crime" of conducting otherwise legal sales without benefit of a $10 federal license.

Such cases have outraged the NRA membership, and have caused us to redouble the efforts against the unclear and excessive provisions of the law which have made such cases possible, and against the actions of the agency which has wasted the resources of the United States Government and cluttered up the court system with meaningless cases -- cases made for the mere purpose of appearing busy so as to justify the budget of BATF.

There has been woeful mismanagement of the BATF, and the Reagan Administration has recognized that mismanagement, for which we applaud them. However, their proposed solution has been to abolish the BATF as an entity and to transfer the functions -- along with all the firearms enforcement agents and some of the management -- to the Secret Service. It has been our position that so long as the same agents are enforcing the same law under the same Treasury Enforcement Office, it makes no substantive difference whether those agents carry badges marked "ATF" or "Secret Service."

What is truly needed is substantive change, and while there are elements of substantive change in the reorganization proposal, they are basically superficial.

When I testifed two weeks ago, you asked that we carefully review the Administration's plan for reorganizing this function of the Treasury Department, and to come back to you to give our opinion as a group particularly affected by this transfer, as to whether or not it should be carried out.

As you requested, we have reviewed the testimonies of Deputy Treasury Secretary R. T. McNamar and Assistant Treasury Secretary for Enforcement and Operations John Walker in careful detail. We have discussed these matters among ourselves, with other knowledgeable individuals in Washington, and with the Legislative Policy Committee of NRA, which called a special meeting primarily to discuss this topic.

We reviewed the fact that when this transfer was first reported it was viewed by the news media as a "great victory for the NRA," and a "political payoff of the Reagan Administration to the NRA." Despite the fact that it is not, and we did not consider it such, that was the public perception of the transfer.

Predictably, the advocates of prohibitive firearms laws immediately condemned the transfer, and began making speeches and writing editorials against it. As details of the plan were reported, Treasury Administration spokesmen attempted to reassure the opponents of private gun ownership that gun laws would be enforced with as much, or more, vigor than in the past, and with as many, or more, agents than in the past.

Reduced to its simplest elements, the idea behind the reorganization is that the Secret Service would be given additional manpower from BATF to supplement present manpower when additional trained agents are needed for protective duty, as in the 1980 election when there were a dozen or more Presidential primary candidates. At the same time, since Secret Service is widely reported to need additional duties to occupy its agents during non-Presidential election years, the transfer of the BATF firearms enforcement responsibilities to Secret Service would give Secret Service agents something to do. As I testified two weeks ago, we were not made comfortable by giving firearms enforcement responsibilities to any agency which needed something to do. That was, and is, the greatest single problem within BATF -- too many agents with too little to do.

However, there is an additional element now being discussed as one of the benefits of the transfer, the supposition that the merger will "enhance intelligence-gathering capabilities" of the Secret Service. Last week, Deputy Assistant Secretary Robert Powis stated as an example of such enhanced intelligence capability the fact that any assassin using a gun would have to obtain a gun. This linkage disturbs us greatly, and does not, in our opinion, bode well for the attitude of Secret Service if it chooses to regulate the commercial sale of firearms as if it were dealing primarily with potential assassins, and sources of assassination weapons.

In a similar vein, as I testified before, we are concerned by the fact that the lawful and normal commerce in firearms should not be delegated to an agency which is primarily a law enforcement organization -- no more than interstate truckers should be regulated by the FBI. Yet in recent testimonies, the Treasury Department has stated that the Secret Service is purely a law enforcement organization. I know of no other law enforcement agency in government which is responsible for licensing a commercial activity.

In his February 3 testimony, Deputy Secretary McNamar stated that the "Treasury's management review of ATF revealed deficiencies, largely of an institutional nature...." It is those deficiencies, Mr. Chairman, about which the National Rifle Association has been complaining; we do not feel that deficiencies involving serious abuses of American citizens can be resolved, or should be resolved, simply by changing the name on the door and issuing new badges.

On the other hand, the management review apparently discovered precisely the type of problem to which we have addressed ourselves in the past -- an excessive number of agents for the job to be done. A friend of mine, a firearms dealer who happens to be a former State Senator, has told me of the frequent detailed inspections of his establishment and his records, including pointless repetitive review. As an example, during one careful audit of his records it was revealed that over a period of a year the record showed that he had had one pound too much propellant in his store magazine on two occasions -- during an entire year. Entirely by accident I learned, from a Treasury official, that the two-man BATF office located less than a dozen miles away from that dealer's establishment would be closed down under the reorganizaton plan, since, we were told, over a two-year period that office had produced only one firearms case. Obviously, those agents were inspecting my friend's records over and over again, and "writing him up" for the most minor violations, in order to justify their existence.

While we applaud the Administration for recognizing such obvious waste, it should be noted that according to Deputy Assistant Treasury Secretary Powis' management study of BATF, during FY 1981, there were only 1.6 firearms cases per year per agent recommended for prosecution. From our own research, we are well aware that a high percentage of these cases were of poor quality, and entirely inappropriate from the standpoint of reducing crime. To put it simply, many of those cases were mere makework. The problem has been too many agents to do the job, too little to do, and too much mischief -- and worse -- in order to justify their appropriation.

Possibly because of an eagerness to placate the concerns of the advocates of prohibitive firearms laws, the Treasury Department has made statements which have reassured our opponents -- and assured us -- that there will be no substantive change in the agency's performance under Secret Service. As we have become convinced that the nation's gun owners would be worse off as a result of this transfer, our opponents have also become similarly convinced. We are told that in private conversations the spokesmen for Handgun Control Inc., which originally opposed the transfer, now favor it; the day the National Coalition to Ban Handguns testified before your Committee, they spoke in favor of it; just last Thursday, when Senator Edward M. Kennedy testified in favor of "gun control" and his anti-gunowner bill, he also stated that he now supports the transfer of BATF to Secret Service.

In short, Mr. Chairman, either intentionally or otherwise, the Treasury Department has now convinced virtually all of the principals who are concerned about how firearms laws will be enforced that there will be more enforcement, not less. And we have seen altogether too much of the kind of firearms enforcement allowed under the Gun Control Act of 1968. Contrary to common belief, there is nothing in that law that directly addresses the criminal misuse of firearms, with the sole exception of a seldom-used penalty enhancement provision. The rest of the provisions of the Gun Control Act are purely regulatory in nature; they should be administered by a regulatory agency and not by a criminal law enforcement organization.

America's firearms owners are overwhelmingly careful, law-abiding citizens; the manufacturers, distributors and dealers who serve them mirror the attitude and outlook of their customers. The best evidence is the fact that by all counts, only about two-tenths of one percent of all firearms are involved in any type of criminal misuse or accidental mishap in any given year. For such honorable citizens to be monitored and regulated by a law enforcement agency which is accustomed to dealing with terrorists and violent criminals, and trained to suspiciously observe every individual as a potential assassin, is to invite even greater abuses than we have seen in the past, and to invite even greater distrust between the American firearms fraternity and the Federal agency which is responsible for regulating this legitimate commercial and recreational activity.

Accordingly, Mr. Chairman, the National Rifle Association is strongly opposed to the transfer as proposed and planned by the Treasury Department.

Mr. Chairman, we continue to note with dismay that there have not been any efforts made to root out the elements within the agencies who have perpetrated the kinds of offenses and abuses which we have reported to you and other Congressional Committees in the past. We urge that if the agency stays in place that there be a major effort to retain those individuals who have shown proper respect for the Constitution and the rights of American citizens and that those persons be dismissed who have not.

Finally, because the reorganization plan called for the elimination or dispersing of much of BATF's top management, most of which has proved incompetent through Congressionally noted failures to properly supervise its agents, or to hold them accountable for abuse, we urge that you insist that any freeze on the transfer be coupled with a demand that BATF's top management be replaced with managers who will hold their agents accountable for their actions.

For the record, Mr. Chairman, we take no position concerning matters outside the purview of the NRA, but within BATF. I am specifically referring to tobacco enforcement and enforcement of the alcohol laws. What actions you might take to ensure what your Committee determines to be proper enforcement in these areas, regarding both funds and personnel, are of no import to the NRA. Nor do we have any concerns about the number of personnel or amount of funds which the Congress deems necessary to authorize the agency to devote to their area of arson.

In summary, Mr. Chairman, and in direct response to your earlier questions, the NRA opposes the transfer of BATF to Secret Service. But we urge that there be a thorough replacement of top management, immediate passage of the McClure-Volkmer Firearms Owners Protection Act, and the enactment of strict agency policy guidelines to insure that the types of abuses law-abiding American firearms owners have been subjected to in recent years will never be allowed to occur.

Thank you again for this opportunity to present the views of National Rifle Association.

DEPARTMENT OF THE TREASURY

ASSISTANT SECRETARY OF THE TREASURY, ENFORCEMENT AND OPERATIONS

STATEMENT OF JOHN M. WALKER, ASSISTANT SECRETARY OF THE TREASURY, ENFORCEMENT AND OPERATIONS

ACCOMPANIED BY:

ROBERT POWIS, DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY
JOHN R. SIMPSON, DIRECTOR, SECRET SERVICE
WILLIAM VON RAAB, COMMISSIONER, U.S. CUSTOMS

CRIMINAL INVESTIGATIONS

Senator ABDNOR. I will now call on Secretary John Walker. I am happy to welcome you back. I am sorry I didn't get around here the exact time I orginally planned.

Mr. WALKER. It is a pleasure to be here. With me at the table is my Deputy for Enforcement, Robert Powis.

I would be very pleased to answer any questions you have at this time.

Senator ABDNOR. Do you have any statement?

Mr. WALKER. I have no further statement beyond the one I delivered last week.

Senator ABDNOR. Thank you. We agreed at the end of the last session when we were together that we would take a little time to digest so I could familiarize myself with it. I still think this is quite a major move and one that I want to make certain I absolutely understand, and I am sure the other members of the committee feel the same.

PRIORITY TREATMENT FOR ACTIVE CASES

There are several questions. Let me start by asking you, the Secret Service has been criticized by law enforcement officials at the Federal, State, and local level for being unable to conduct criminal investigations or in some cases to even testify in court against those already arrested when the Presidential campaign comes around. Firearms and arson cases just can't be put on the shelf. How do you propose to insure these cases get the priority treatment they deserve?

It is these kinds of things, Mr. Secretary, that bother me. I just don't treat arson cases, firearms cases, or other things as something you can temporarily put to a side. Obviously you have had to do that in the Secret Service because, as you say, there are times when you are short of personnel and the needed people. So how are you going to take care of that situation here? Are we just going to forget about these over a 3- or 4- or 5-month period?

Mr. **Walker**. No, I firmly believe we will be able to continue the level of enforcement in the firearms, arson, and explosives area that we have been maintaining in the past. The addition of ATF agents and functions and money to the Secret Service in this area will inure to the benefit in effect of the Secret Service field offices.

PROTECTION FUNCTION

Now the basic protection function on a day-to-day basis is carried out by the Protective Division and people on permanent protective details.

Senator **Abdnor**. How many are there?

Mr. **Walker**. Senator, we would prefer to discuss the number of special agent's assigned to protective details in executive session.

Senator **Abdnor**. That will be fine.

EFFECT OF TRANSFER OF ATF AGENTS TO SECRET SERVICE

Mr. **Walker**. The transfer of 1,200 ATF agents to the Secret Service will see the field offices roughly double in size, and it is clear that there will be sufficient personnel to handle the arson, explosives, and firearms cases that develop in a given community. There will be times there is a protective requirement in that particular community and we can expect to satisfy that protective need. But we do not see it as seriously interrupting the firearms, explosives and arson investigations that are being conducted in that community.

COUNTERFEITING INVESTIGATION

In fact, I think it might be helpful by analogy to look at the counterfeiting situation, because the Secret Service, as you know, has counterfeiting jurisdiction now. And the question might well be asked what happens in campaign years, in periods of high protective work load, to the counterfeiting investigation? And while I can answer generally I have the Director of the Secret Service, John Simpson, here, and I think he can answer if I could ask him to come up to the table.

Mr. **Powis**. Mr. Chairman, if I may while we are waiting for Mr. Simpson, traditionally some of the best cases the Secret Service has made in the counterfeiting area have been during campaign years. Priority in criminal enforcement cases has to be made and that would be certainly the case in this merger. Firearms, arson, and explosives cases would take on priority matters.

As for the courts, I have been involved in campaigns, in the last several, where every effort has been made to produce Secret Service people for trial. Hardly ever do Secret Service people miss a trial because of a campaign.

Mr. **Simpson**. Mr. Chairman, we prioritize in those years when we have high levels of protective responsibility, that is, the years of campaigns, where we have anywhere from 7, 8, 9, 10, to 12 candidates. What we have done is over the last several years is maintain approximately an 85-percent suppression rate of any kind of counterfeiting that has taken place in this country. For instance, in 1979-80, which were the peak campaign years, we seized being passed upon the public $46,195,393 in counterfeit notes in 1979 and $55,492,433 in 1980. Approximately $5 million counterfeit notes were passed into the public. This is about an 85-percent suppression rate.

Senator **Abdnor**. Gentlemen, I would have to conclude you have about the right number of people working in the Secret Service and a heck of a lot too many in the other. I don't know why you need more if you had this all well taken care of in other times. If you transfer these other agents from ATF to the Secret Service, have we got too many people over in ATF?

Mr. **Walker**. No, Mr. Chairman. Your question was would that problem of firearms, arson, and explosives enforcement cases be exacerbated in election years. I wanted to point out today how the Secret Service handles the counterfeit problems. The same management techniques would be used with the transfer of functions and personnel to the Secret Service. We are not talking about just transferring persons to the Secret Service, we are talking about transferring important criminal enforcement responsibilities to the Secret Service as well.

In this regard I think it should be pointed out that the transfer of these important criminal enforcement responsibilities to the Secret Service will inure to the overall benefit of the combined organization. The Secret Service, with added criminal jurisdiction in an area relevant to their protective mission, in the area of violent crime, will be a better equipped agency to deal with the protective responsibilities they have as well as the important investigative responsibilities.

In addition to that, with the added criminal jurisdiction, you will find the Secret Service is a better balanced agency, balanced between protection and criminal enforcement investigations.

REGULATION OF FIREARMS

Senator **Abdnor**. Where does regulatory come under that? That is a very important function. I never associated regulatory with enforcement in any way, or criminal. My heavens, there is quite a difference there. All of a sudden we do away with regulatory and become criminal and enforcement.

Mr. **Walker**. If I could point out, the regulatory aspect of ATF would be oriented toward the criminal enforcement of the firearms laws, the firearms laws directed against criminal abuse, criminal behavior. We are not interested, frankly, in this administration in regulation for regulation's sake. We think there may be too many regulators in the Government, and we think maybe firearms dealers in the past have been overregulated. We think regulation to the extent that firearms dealers' records need to be checked should be done in the context of criminal activity and criminal enforcement. So that would be the focus of this.

So far as the regulatory function with respect to firearms actually being transferred to the Secret Service there is ample precedent for that in law enforcement. For example, in the Drug Enforcement Administration the Federal Government's regulation of the drug industry is within DEA. There is nothing unusual about having a small regulatory aspect to a larger criminal enforcement mission.

Mr. Powis. Mr. Chairman, what we propose to do in the regulatory area is really cut back on the total number of compliance inspections and really zero in on where the problems are closely related with criminal enforcement. We have been doing in the last couple years about 11,500 compliance inspections a year. The vast majority of them are done on the basis of trying to keep some kind of a program of going to certain dealers every few years. Our proposal would involve cutting back on the total number of compliance inspections but zeroing in where the problems are.

For instance, if a gun used in a crime is traced to a particular dealer and he does not have a record, our feeling is rather quickly there is some basis for a compliance inspection. If a number of guns used in crimes are traced to a particular dealer, while he maintains records this starts to show up regularly, we feel there should be a compliance inspection. Of course, the ultimate is if you have an allegation of criminal activity on the part of the dealer——

Senator Abdnor. What is done today?

Mr. Powis. Today, Senator, certain dealers such as pawnshops, multiple dealers are targeted on the basis of every 18 months to every 2 years. We think that the program we are embarking on will get away from the harassment of dealers. We agree most of the dealers in the country are law-abiding people and maintain records. To show you the efficiency of the present system, there were 11,500 dealer inspections in 1980; 1,125 of them resulted in a finding of violation. But the vast majority of those violations were minor recordkeeping violations which were corrected on the spot. Only about 350 cases were referred to criminal enforcement by regulatory enforcement, and only three of those resulted in actual commencement of a criminal investigation. We think we can cut back on the number of inspections and zero in where the problem really is.

FINGERPRINTING

Senator Abdnor. Mr. Walker, let me ask you, has there been any discussion concerning fingerprinting on applications for dealers' licenses?

Mr. Walker. That is a subject we could entertain in terms of running criminal background checks.

Senator Abdnor. Well, you would do it. If you are going to do it you would have to do it for all of them.

Mr. Walker. No; we would probably not see the need to do that because we don't feel that basically applicants for dealers' licenses have a record of—we don't see that as a problem, because basically we are working on the premise that has been proven by all the statistics that gun dealers generally are law-abiding citizens. We would see no reason to subject them to something that would almost in effect presume a criminal past, such as a fingerprint check.

Senator Abdnor. You will say this will not be done, there will be no fingerprinting?

Mr. WALKER. We have no plans to do that.

Mr. POWIS. Unless the law was changed and required it.

DOMESTIC INTELLIGENCE

Senator ABDNOR. What do you think the role of the Secret Service should be in domestic intelligence?

Mr. WALKER. Well, the Secret Service has important responsibilities in terms of becoming informed of groups and individuals which would threaten the life or could threaten the life of a President. I think we all agree that the flow of information to the Secret Service in this area should not be impeded. Obviously there are limitations which Congress has imposed in the past which would restrict the degree to which the Secret Service or any Government agency can be involved in domestic surveillance.

We think in the past the balance has been struck too far away from effective law enforcement. There is a balance to be struck there. It is a difficult balance, it is not one that can be easily arrived at. We feel, however, that in this particular instance the Secret Service, which is a consumer of intelligence normally from other agencies, can directly get access to intelligence relating to violent crime, to criminal enforcement, to the criminal behavior with respect to explosives and firearms such as terrorist groups, hate groups, and the like. This would not be done by the Secret Service with a view toward, in effect, a proactive campaign to try to neutralize these groups in the sense one might fear from a police agency or an enforcement agency with general jurisdiction. This intelligence is important to the Secret Service in a defensive way. It is important to the Secret Service to know which groups and which individuals might pose a threat to one of their protectees so that they can take appropriate action protecting and guiding the protectee and in terms of recommending certain security measures and also setting up defenses against such a threat.

Mr. POWIS. Mr. Chairman, there is not any presumption on the part of the Secret Service or Department that the gun dealers or people buying firearms would be in any way a threat to the President of the United States. I find this a preposterous proposition. What we are talking about is that people who do threaten the President and do attempt to do things to world leaders and protectees of the Secret Service do use and need both weapons and explosives. We are talking about a situation where the Service would be in a position to get firsthand information about these kinds of groups. There are numerous groups.

WORK ASSOCIATION WITH BATF

Senator ABDNOR. Do you find that BATF doesn't work with you now? Do you find they work with you and you are unable to work with them?

Mr. POWIS. They do work with the Secret Service and the work is good. It would also give the Secret Service a closer linkage to this type of situation, a situation where when a terrorist group is identified as having an interest in the President, and from time to time those things happen, whereby the Service could immediately, in conjunction with these functions, investigate the possibility that this group has firearms and explosives, or go to the files and find out that they in fact do have firearms and explosives and have been the subject of previous investigations.

Senator **Abdnor**. Couldn't you get that information from BATF now?

Mr. **Powis**. We can and we do, but it would be closer and a more efficient way of doing business.

INTRODUCTION OF COMMISSIONER OF CUSTOMS

Mr. **Walker**. Mr. Chairman, if I could I would just like to introduce to you the Commissioner of Customs, William Von Raab, seated on my left. Since under our proposal the functions of the BATF would be transferred to the Customs Service and to the Secret Service, both the Director of the Secret Service and the Commissioner of Customs are here to answer any questions you may have.

DOMESTIC INTELLIGENCE

Senator **Abdnor**. I share some concerns after spending time with people out in the field. I think you would see you are getting a lot more attention. I think you have got a great group of people. The only trouble I think this Congress and people over you haven't put enough attention to it.

WORK ASSOCIATION WITH FBI

I just have a little concern I guess when we talk about domestic intelligence. It could get carried away. They thought the ATF was getting out of hand if you used collection of domestic intelligence. Does that have any overlap with the FBI? I was a little concerned in the Intelligence Committee that you and the FBI don't work closely together. What have you done in the last year to improve that?

Mr. **Powis**. I think Mr. Simpson might be able to give some answers on that.

Senator **Abdnor**. These are some things I think we can do immediately. I am wondering what we have done after a year? Some of the major things there ought to be some working relationship. And I find a lot of other places we ought to be working together. But we ought to be putting pressure wherever we can to do a better job of coordinating and working together. You can certainly work closer and have a better working relationship one agency to another.

Mr. **Simpson**. Mr. Chairman, I can only speak on behalf of the Secret Service. Our relationship with the FBI is closer than it has ever been. Director Webster is more than forthcoming on any information available to the Bureau. It is given on a very timely basis to the Secret Service. I can only give them a high mark for the relationship we have with them at the present time.

Senator **Abdnor**. In other words, the problems we encountered a year ago probably wouldn't be very likely now. You have done a good job of working that out.

Mr. **Simpson**. Mr. Chairman, we are all prone to human error, and I think in the case of a year ago that was a particular situation. I have to say again that the FBI has been very forthcoming as far as we are concerned.

DOMESTIC INTELLIGENCE COLLECTION

Senator **Abdnor**. In the statement of Mr. McNamar given before our House counterpart subcommittee on February 3, he stated that the merger of the BATF and the Secret Service will enhance the intelligence-gathering capabilities of the Secret Service. Now we have seen confusion in the past over the CIA involvement in domestic intelligence. The administration has clearly designated the FBI has primary responsibility in the area of domestic intelligence collection. Doesn't this merger tend to confuse the issue again? I mean we just got the thing cleared up and now we are saying we consider you, we could get back into it with putting these two groups together with the firearms and explosives; it would be one way of entry into domestic intelligence.

Mr. **Simpson**. Mr. Chairman, as far as the Secret Service is concerned, intelligence is only as good as the source available. We feel those sources can be exercised to the fullest of everybody's ability if you have an opportunity. If we have a game plan before the game is played obviously we can defend against it.

Mr. **Powis**. Mr. Chairman, there is no question the FBI has the domestic role. The Secret Service interest here would be strictly with respect to persons or groups who might constitute threats to Secret Service protectees, including the President.

AGENTS AGING PROBLEM

Senator **Abdnor**. Let me get off into another part I am concerned with. The former Director of the Secret Service, H. Stuart Knight, we had him in here about the aging special agent population. You will have 40-year-old Secret Service agents working 14 and 16 hours a day in the next Presidential campaign. How will incorporating the BATF, who even are considerably older on the average than Secret Service agents, help this problem?

Mr. **Walker**. Mr. Chairman, this problem has been on our mind as we have worked on the proposed transfer of the criminal enforcement functions to the Secret Service. In fact, the proposal that we have in mind would transfer 200 ATF agents under age 31 to the Secret Service and would directly address and alleviate the very problem that Director Knight pointed out.

Senator **Abdnor**. Where does that leave you with the other agents if you take those out? That certainly leaves the older ones in the category of doing what?

Mr. **Walker**. Well, there is a better mix as far as younger agents are concerned at the ATF, and with those agents going to the Secret Service there would be a younger group of agents. It would tend to reduce the average age of the agents, combined agents, and it would also provide the Secret Service with a group of trained agents, basically trained in criminal enforcement, without having to go through the basic training that would otherwise be required. So this problem would directly be alleviated by this transfer.

AGENT ATTRITION

Senator **Abdnor**. Well, isn't it true that earlier we have already allowed the Customs and Naval Investigative Service to skim off some of your best agents from BATF? Haven't already some of those been transferred to other places?

Mr. **Walker**. What has happened here is that jobs have become available in other agencies, not just in Customs but elsewhere, and these jobs have been filled by some of the agents who have left the rolls of ATF to take other jobs. Some of them have been Customs, some of them have been in the Secret Service, others have been in other agencies.

In fact, for the record I would just like to state because this is an issue that has come up during the course of the hearing, as of February 26, 1982, approximately 78 agents have left the rolls of ATF; 27 of those retired, 8 resigned. Other Federal Government agencies picked up five. The IRS picked up one. The Secret Service picked up 7 and Customs picked up 23. There has been some reduction of agent force here because of the outplacements that have occurred.

Senator **Abdnor**. Are these the average ones or are these the better?

Mr. **Walker**. Attrition is a little higher than average. This is, of course, part of the general attrition that has taken place with ATF. During the course of the past year with the budget uncertainties, with the transfer of functions and discussions of reorganization there has been a fairly high rate of attrition in ATF. That is a double-edged sword. While these people have left and taken jobs elsewhere it has enabled us to try to shape the personnel picture in ATF for the reorganization as it comes forward.

LAW ENFORCEMENT FUNDING

Senator **Abdnor**. Let me say one thing, Mr. Walker. That is one area this Appropriations Subcommittee wasn't about to start cutting and we informed Mr. Stockman of that, because I think law enforcement is just as important as defense. We spend billions of dollars on drug rehabilitation and yet to sit around and not have the kind of enforcement we need in that area I think is the most ridiculous thing I have ever seen. I don't buy that. I am a pretty considerate guy, but I am good at using a knife and cutting too. We don't want to have any problems with these people.

Mr. **Walker**. I would like to point out here that a keystone to our proposal here, the transfer of functions, is the need to add $23 million to the current level of $115 million which is in the continuing resolution. We need $138 million in ATF to do the transfer.

Senator **Abdnor**. Our concern is if nothing else happens we have good law enforcement and policing. That is what we are trying to make sure of.

Mr. **Walker**. Absolutely. I think we are in agreement of the need for the additional $23 million.

Senator **Abdnor**. I hope we are. When I look over the situation and see what we are getting I am not sure.

Mr. **Walker**. Mr. Chairman, if I can follow through on one thing on that. At the $115 million level as presently pending, if that level were to hold we will not be able to carry out the effective enforcement of the laws that are within ATF's jurisdiction. There would be reductions of substantial magnitude. We would either need massive furloughs, if we had to go the RIF route we would be having to RIF maybe a thousand agents. That would be, in our view, unacceptable from a law enforcement posture.

GRADE STRUCTURE

Senator **Abdnor**. Mr. Walker, you stated at a meeting of ATF agents in New Orleans one of the reasons for transferring all of the firearms and explosives responsibilities from ATF to Secret Service was to resolve a grade structure, salary problem that exists in the Secret Service. Can you elaborate on that problem and explain how transferring responsibilities will resolve that problem?

Mr. **Walker**. Excuse me, can you repeat that?

Senator **Abdnor**. At a meeting you had of the ATF special agents in New Orleans you said one of the reasons for transferring the firearms and explosives responsibilities from the ATF to Secret Service is to resolve a grade structure salary rate problem that exists in the Secret Service.

Mr. **Walker**. I really have absolutely no recollection of making that statement, and I have a fair recollection of the meeting and I just simply do not recall that statement, and frankly I don't think it has been a consideration.

Senator **Abdnor**. Well, they have grade 12's, you have grade 11's. You have grade 12's for the Presidential and dignitary protection assignments.

Mr. **Walker**. Both agencies have some agents at roughly the same level. There doesn't seem to be any problem as far as I can see either way in terms of actually affecting the transfer as far as grades are concerned.

CUSTOMS BUDGET REDUCTIONS

Senator **Abdnor**. I am getting back to the Customs budget. The fiscal 1983 Customs budget calls for a current program reduction of $38.3 million and approximately 1,054 full-time positions RIFed and another 800 positions cut through attrition. Yet you are proposing to shift 719 ATF personnel and $34.1 million in Customs to pick up alcohol and tobacco activities. Why is the administration proposing such a drastic reduction in ongoing Customs functions in fiscal year 1983? And doesn't this indicate a conscious policy shift away from important traditional Customs enforcement activities such as drug interdiction?

Mr. **Walker**. I think your question, Mr. Chairman, is directed mainly at Customs budget and not so much at the reorganization. The reorganization, if I could just deal with that first, would involve the transfer of the alcohol and tobacco regulatory functions to Customs with funds, and those positions would be fully funded.

Now the general reduction that has been recommended in the overall Customs budget for 1983 is an economy move. It is designed not to interrupt or interfere with the drug interdiction program, the important investigative initiatives that go on in Customs, but it is designed to achieve economies in other areas where reductions can occur.

Senator **Abdnor**. Did this come from OMB to you or do you yourself feel this is a good place to economize?

Mr. **Walker**. We think there can be economies made.

Senator **Abdnor**. Have you visited these places lately and seen the overtime they have to put in to try to keep up with it? I was astonished when I looked at the overtime we pay. Some of those people get almost what you make with overtime. I don't know. Maybe Mr. Von Raab will give me the answer to that. Maybe I do more harm visiting than I should, but I just can't believe this. When I see what happens down there on those borders and Customs and you want to cut all these people and give them cigarettes and tobacco and other things. It overwhelms me.

Mr. **Walker**. First of all, as far as the alcohol and tobacco functions are concerned, we do intend to transfer the personnel to Customs to carry out those functions, and that is true whether or not the alcohol enforcement is at the 100-person level or the 400-person level. There is a difference between the two levels. I am aware of the great interest on the part of the alcohol industry, to have enforcement maintained at the 400-person level. At this time I would like to point out that if Congress restores those funds in 1983 for alcohol enforcement, this administration intends to fully carry out that function and enforce it at whatever level Congress funds. But we do not see this as changing the picture as far as the Customs budget. The Customs budget exists independently of this function and can be dealt with, and I am sure your committee will be wanting to get into that in the appropriations.

Senator **Abdnor**. We sure will. You are going to find me a great advocate in finding some more people. I still say your people are tremendous. I was greatly impressed, under the conditions they work and carrying out what they have to carry out, the equipment they use.

TRANSFER TO IRS

Have you suggested to the alcohol beverage industry if you don't get the budgetary funds you need that you will stick the alcohol regulatory functions in IRS? Has that ever come about? Has that statement ever been made?

Mr. **Walker**. I don't think it has as such.

Senator **Abdnor**. What do you mean as such?

Mr. **Walker**. Well, we have considered various alternatives to the proposal that we have put forward at various times, and during the course of the discussion several options have occurred. We have considered various reorganization or transfer proposals. The IRS has not been excluded from that consideration. But right now it is certainly not our intention to do that.

Senator **Abdnor**. I hope I never hear this. But IRS and listening to their problems and redtape, I am afraid it would be very minimal in their handling of it. They have much greater problems to handle. You don't yourself then foresee any conditions where you might be putting these functions over in IRS?

Mr. **Walker**. Right now we don't anticipate it, except that we would be forced to some very hard choices if the present funding level of $115 million was not changed and if we didn't get the supplemental we requested for the additional funds. I don't know exactly what proposals we would have to deal with, what efforts we would have to make at a very lower level to try to carry out the functions.

FAA ACT

Senator **ABDNOR**. What do you consider to be the minimum mandatory level of the enforcement of the FAA Act?

Mr. **WALKER**. The minimum would be basically label approvals and permit approvals. That is the minimum.

Senator **ABDNOR**. And how much do you need for that?

Mr. **WALKER**. Well, that much is in there. It is in our budget proposal and the 100 positions has been accounted for and would be covered at the $138 million for fiscal year 1982.

Senator **ABDNOR**. We could assume about a 100 of these people would be to the liquor, the FAA?

PERSONNEL BREAKDOWN

Mr. **WALKER**. Yes. Of the total of 719 positions that are envisioned in our proposal, those 719 would cover the full tax collection function and revenue protection function, and 100 positions could be allocated to the FAA Act enforcement. Now if full FAA Act enforcement would be funded that would require another 300 positions, and that would bring the grand total to 1,019.

Senator **ABDNOR**. Would that all be used pretty much to that end of it?

Mr. **WALKER**. Of the 1,019, 400 of those positions would be allocated to FAA Act enforcement, and that is roughly present levels. It would maintain enforcement at present levels. The other 600 or so are directed toward other program areas that would be transferred to Customs, including revenue protection, some alcohol enforcement, administrative and matters of that sort.

Senator **ABDNOR**. If you had the 719, this would provide for verification of the information provided on the application for permit or label or product formula approval; you are satisfied you can do that.

Mr. **WALKER**. Yes.

Senator **ABDNOR**. You can verify the facts, give all the satisfactory approval to a permit or label or formula under this?

Mr. **WALKER**. Yes, we would carry out the permit and label approval function.

Senator **ABDNOR**. How many does BATF use for that same function?

Mr. **WALKER**. At the present time?

Senator **ABDNOR**. Yes.

Mr. **WALKER**. It is approximately 400 today.

Senator **ABDNOR**. You will have 100 in that?

Mr. **WALKER**. That is right.

Senator **ABDNOR**. Do you think 100 will do what the 400 will?

Mr. **WALKER**. No, we would be eliminating a number of areas which would not be fully enforced if we only have 100.

AREAS TO BE ELIMINATED

Senator **Abdnor**. What areas would we eliminate?

Mr. **Walker**. Well, there is a trade practice area that would not come within the enforcement, would not be funded; some advertising would not be funded, matters of that sort. But those would be carried out if the Congress put back the funding up to the 400 position level, from the 100 to the 400.

Senator **Abdnor**. Well, you feel comfortable you can enforce your statutory responsibility to insure that the criminal element—that is the organized crime element in the business—is kept out of the alcohol beverage industry; you are satisfied you can do that with this minimum crew?

Mr. **Walker**. Yes.

MAINTAINING POST ENFORCEMENT LEVELS

Senator **Abdnor**. And you are going to be able to insure that the domestic and imported products are what they are labled to be; you are going to be able to do all these things just as well as we are getting them done today?

Mr. **Walker**. I cannot say there will be—we obviously are not going to have the same level of enforcement with 100 positions as we did with 400.

Senator **Abdnor**. Can we afford to have less? For the sake of saving dollars can we afford any deterioration?

Mr. **Walker**. We feel this is an area where the industry can continue to carry out a program of self-regulation to a great degree that has already gone on in the past.

Senator **Abdnor**. Do you know what the Congress intended when we passed that FAA Act? Didn't we specifically intend to enforce this thing?

Mr. **Walker**. Well, the FAA Act was passed in 1935 as an outgrowth of in effect the change after prohibition, and at that time we had a vastly different country than we have today, a vastly different business climate and different fears. We feel that the FAA Act as drafted really bears much less relationship to the business climate today than it did to the business climate of 1935. And Congress frankly has not addressed many of the issues that are raised by the FAA Act in the past 40 years.

FAA ACT DIRECTIVES

Senator **Abdnor**. Well, I have tried to do a little work on this. I am looking at the FAA Act. Isn't it right, No. 1, they are supposed to issue permits to prevent criminal elements from entering into the liquor business? Can you quarrel with that?

Mr. **Walker**. No.

Senator **Abdnor**. Aren't they supposed to establish standards of identity to insure reliability and integrity of labels on alcoholic beverages; isn't that a very, very important function, just as important today as then?

Mr. **Walker**. Well, it is an important function. There are, of course, many important functions that we feel and the Department feels get into the question of whether or not the taxpayers' money should be allocated to these. It is the administration's view that the taxpayers' money is properly spent if 100 positions are funded here. We recognize that Congress may adopt a different view. But there is certainly room for debate here.

LABELING REGULATIONS

Senator **Abdnor**. I would like to think I was buying some alcohol that I could depend on that label. I think the drug people are very insistent on their labeling and the importance of it. I think particularly in this day of gasohol, and I am all for gasohol, I think today your job in that area would be way more different than it was before, because this is going to be going on. I hope we are because I think it is a major step toward energy independence. But some people could conceivably be carried away a little bit and start doing other things. I just wonder if Congress would really be willing to say this is something we could become lax on. You did say you would pretty well cut out the advertising.

Mr. **Walker**. Yes.

Senator **Abdnor**. Deceptive and obscene advertising which could conceivably come out.

ADVERTISING ENFORCEMENT MATTERS

Mr. **Walker**. It is not to say there might be State laws that would be violated in this area or others. I don't have the figures, I would be happy to supply them, of the number of advertising enforcement matters that have come up in the last year and their magnitude. But my impression is we are talking about whether a beer manufacturer uses the words "Relax with a beer," or "Have a beer and relax," that kind of thing, which are relatively, in my judgment, minor issues.

[The information follows:]

Fiscal Year 1981 Advertising Enforcement Matters

During fiscal year 1981 five investigations were conducted involving serious advertising matters. These cases were as follows:

(1) The industry member advertised that his light beer was produced partly from 5 percent rice grain. In fact, he had substituted less expensive corn grits.

(2) The industry member advertised his wine cooler as being sparkling. In fact, if did not qualify as sparkling wine and was in violation of section 5662 of the Internal Revenue Code.

(3) The industry member advertised that his wine was produced without the addition of chemical preservatives. In fact, sulfur dioxide was used.

(4) The industry member advertised his product as Lite Vodka with 25 percent fewer calories. In fact, the proper designation for the product was diluted vodka.

(5) The industry member's advertising implied that his product was a distilled spirits product. In fact, it was wine.

Statistics regarding the precise number of advertising violations handled via letter or through meetings with industry are not maintained. However, it can be stated that these involve up to 20 per month. Most of these would be considered as technical in nature.

It is also important to note that ATF pre-clears in excess of 1000 advertising programs each year. Potential violations of the FAA Act are eliminated by the preclearance process, therefore, never reach the investigation level.

REDUCED ENFORCEMENT OR POLICING

Senator **Abdnor**. I just wonder what would happen if I thought there was any less enforcement of or policing.

Mr. **Walker**. We don't see it as a major problem now. Obviously if a problem arose and it became a national concern we would be directing our attention to that. I don't think we really need to spend money chasing problems that do not presently exist or are not of great concern.

Senator **Abdnor**. I know in the past you have had to enforce unfair trade practices on the distribution of liquor. I think that is also part of the law. Maybe we in Congress, if we think it ought to be changed, probably would be well if you introduce legislation to us rather than trying to change it through appropriations. Ever since I have been on this committee I find we try to pass more authorization through this committee than the appropriate authorizing committees. Every time someone has something they can't get through the authorizing committee we seem to wind up with it in this committee with an appropriations change.

Mr. Secretary, the Commissioner of Customs, Mr. Von Raab, who is with us, I think you recently testified before the Trade Subcommittee of the House Ways and Means Committee that this level of funding assumes only minimum enforcement of the Federal Alcohol Administration Act with 100 average positions and $3.5 million. After all the evidence taken by this committee from the alcohol beverage industry, are you still satisfied that 100 positions and $3.5 million can regulate a socially sensitive area?

Mr. **Von Raab**. That was not my testimony. However, I am satisfied that it would be adequate. I have not given testimony on the levels of FAA funding.

Senator **Abdnor**. That is not a correct statement?

Mr. **Von Raab**. It may be a correct statement, but it is not testimony I have given in the past. I have only testified on the effect of this transfer to the existing functions of the Customs Service. I would guess that that was testimony Mr. Walker made.

Senator **Abdnor**. Did anybody make that statement?

Mr. **Walker**. Could you repeat the statement?

Senator **Abdnor**. The statement was this level of funding assumes only minimum enforcement of the Federal Alcohol Administration Act with 100 average positions and $3.5 million.

Mr. **Walker**. That is correct. I have given that statement. I think it was my prepared remarks.

MANAGEMENT REVIEW

Senator **Abdnor**. Let me step over to another area here.

Deputy Secretary McNamar in a document which is identified as appendix A submitted as part of his testimony before Congressman Roybal's subcommittee on February 3, 1982, and in his prepared testimony before the subcommittee on February 23, 1982, he referred to a management review that was conducted I guess by your office, Mr. Walker, in July 1981.

Mr. **Walker**. That is correct.

ATF MANAGERS PARTICIPATION IN REORGANIZATION PLAN

Senator Abdnor. It was used as a basis for the decision to abolish and reorganize ATF. Let me ask you, did any ATF managers participate as a member of the review team?

Mr. Walker. Not as members of the review team as such. The views of ATF were obtained at various conversations and by the study group. Just for the record I would like to say I believe it was in late June I requested my deputy, Mr. Powis, to head up a task force in order to do this management study. He did so. And the management study continued from July, August, and through September, and I believe its conclusions were made available in October. But in September we were almost fully aware of what these were. This study involved interviewing over 150 people. These people were not only ATF personnel in Washington and the field but also U.S. attorneys, members of other agencies, judges, and the like, obtaining all their views on ATF.

The basic conclusion that was reached by that study, Mr. Chairman, was that ATF was not viable as an ongoing agency, that there was an extremely unhealthy disparity of functions within the Agency. This was the first time, Mr. Chairman, we had actually received firm evidence that it was the disparity of functions that was creating much of the problem here. In the past as we considered various reorganization proposals we had considered moving ATF as a total to one agency or another or whether to keep it independent. We really were missing the point. We weren't focused on the problem. The real problem was in effect you have two separate subagencies in one agency, and these subagencies are incompatible. That was the basic conclusion of the report.

PERSONNEL INVOLVED IN REORGANIZATION STUDY

Senator Abdnor. How many people did you work with? Who was part of this study? Who did you have on there?

Mr. Powis. Mr. Chairman, there were nine people.

Senator Abdnor. You didn't have anybody from ATF?

Mr. Powis. No, sir. We interviewed 150.

Senator Abdnor. I know, but wouldn't it have been awfully helpful? Do you have experts in this field? Would you consider yourself an expert in BATF? Have you had a lot of experience in that?

Mr. Powis. Sir, we sought the input of a lot of people in ATF. The people on the team were constantly talking to ATF people to get their input and views. I consider myself an expert on law enforcement matters and management.

Senator Abdnor. I don't mean to suggest you are not.

Mr. Powis. I learned a lot about ATF in the course of this study.

Senator Abdnor. But you didn't think it was necessary to have anyone as a member of the review team. Did anyone in the ATF review the results of the management review before your decision was made? Did you call anybody else?

Mr. Powis. No, sir, not before the recommendations were made.

Senator Abdnor. Did you give them a chance to respond to any issues raised by the management review? Did they have a chance to come in and say this is our way of looking at it?

Mr. Powis. No, sir.

Senator **Abdnor**. Has anybody in ATF ever received a copy of the report to look it over and review up to this date?

Mr. **Powis**. It was made available to the Director of ATF, but the management review was an independent study made for Mr. Walker and the Department and submitted to the Secretary.

DEPARTMENT OF TREASURY REVIEW

Senator **Abdnor**. Wasn't a review made, Mr. Walker, in June 1981 by the Department of Treasury?

Mr. **Walker**. There was a review, if you will, by the staff of certain proposals which dealt with the possible transfer of ATF as an entity to Customs, the IRS or whether to keep it as a separate agency. But that review was not completed and was never officially acted upon. We felt that a more indepth management review was necessary at that time and we went further than the first review, which was not as deep and really just never was completed as such.

Senator **Abdnor**. Didn't it give you any concern that the last thing it says is "Based on this analysis, it is recommended that BATF remain a separate bureau and that the proposed 5-region realignment be approved"?

Mr. **Walker**. Could I have the document you are reading from? Could I see a copy of that?

Senator **Abdnor**. Mr. Walker, I would like to show you where you made your statement.

Mr. **Walker**. Mr. Chairman, as this document indicates on the top, it was never finalized. This is simply a draft which was referred up to my office. It was never adopted as such and the proposal did not go through. We felt it was necessary to conduct the management study Mr. Powis referred to and that we have been discussing earlier. So there was no final determination with respect to this.

But I can say, as of that point, the alternatives that were before us at that moment were whether or not ATF as a whole should go into IRS, whether or not ATF as a whole should go into Customs, or whether it should remain as a whole as a separate agency. And we did not address at that time the fundamental question of the disparity of functions between the alcohol and tobacco revenue protection, on the one hand, and firearms, arson, and explosives enforcement on the other hand, which is the finding that is really fundamental to the proposed transfer of the functions today.

FAA ACT

Mr. **Von Raab**. If I could clarify my answer which was probably incorrect. I did as part of my introductory statement before Congressman Gibbon's committee, state that "this level of funding assumes only minimum enforcement of the Federal Alcohol Administration Act with 100 average positions and $3.5 million."

I am sorry; I misunderstood your question. I thought you asked if I had made a statement as to whether this provided minimum enforcement, meaning, did I have an opinion whether the 100 average positions provided minimum enforcement? I did make a statement that the level of funding assumes minimum enforcement. But I have not testified, nor have I intended to testify, on whether this does provide minimum enforcement as a matter of opinion or judgment. But the purpose of the funding is to provide funds.

Does that help?

Senator ABDNOR. You bet.

Mr. VON RAAB. Thank you for allowing me to correct that.

JUNE 1981—MANAGEMENT STUDY

Senator ABDNOR. Mr. Walker, your management study of June 1981 says, and I quote, "In ATF, Treasury management has at its disposal an effective law enforcement and revenue agency with a recent history of success, effectiveness, flexibility, and versatility." Now do you think, all of a sudden the Bureau has gotten inefficient and plagued with deficiencies?

Mr. WALKER. First of all, this report, as I pointed out, was not my opinion or review.

Senator ABDNOR. Tell us about that.

Mr. WALKER. You are talking about a draft report that was furnished to us that I received, and at that same point, we decided to take a much deeper look at ATF because there was concern in the Treasury Department and my office, with me, as to whether or not this accurately reflected the situation. This was in effect a part of the background against which we decided to go much deeper.

Senator ABDNOR. Tell us about this study. Who made that June 1981 study?

Mr. WALKER. This was not a complete study.

Senator ABDNOR. Who was on the team?

Mr. WALKER. My Director of Operations, John Mangels, did much of the work on this, made inquiries and did much of the work. And it was in response, Mr. Chairman, to an initial request in effect by OMB that there be a reconsideration or there be some consideration given to whether ATF should be transferred to IRS in toto, and it was our conclusion that would be inappropriate. And we also gave consideration to whether ATF should be transferred to the Customs Service.

In the book, "The Mandate for Leadership," which was the Heritage Foundation's, there was a recommendation there—in fact I believe the chapter of this portion was written by your committee counsel—which recommended a transfer to the Customs Service. We looked into that and we did not feel that was an appropriate move at that time either. We felt that those alternatives, that it was better to keep ATF independent rather than transfer it in its entirety to the Customs Service or Internal Revenue Service. But we weren't focusing on the primary problem, and the primary problem was the fact that the alcohol and tobacco regulatory and revenue protection functions have absolutely nothing to do with the firearms, arson, and explosives function and there is no reason why these separate functions should be in the same agency. It is inefficient, it is unproductive, and it leads to poor morale. It is a misconception. It is a change that has to be made. It should be made.

LOW MORALE

Senator **Abdnor**. You believe it leads to low morale. I would say what leads to low morale would be the poor people in ATF wondering what is going to happen. I don't know if it was that bad. If I were working for them, I would sure have low morale every day wondering what is going on.

Mr. **Walker**. It is exactly the problem of this agency, the fact it has been under attack, the fact of changing budget situations, the reorganization situation. That leads us to the conclusion that we would like as quickly as possible to effectuate the various transfers that we have envisioned. And I can safely say that the ATF agents, if a poll were to be done today, would be almost universally in favor of this transfer.

Senator **Abdnor**. You really feel that way?

Mr. **Walker**. Absolutely, and I could easily support that.

Senator **Abdnor**. Well, I know one thing. I heard a lot of praise for them from the industries when they were in here, if that would make them feel any better. They seem to think the programs they were conducting, that BATF was conducted, were being well carried out. NRA found fault with them, but that was the only group.

FIREARMS TRACING

Do you plan to trace firearms from the last point in the distribution channel to the individual purchasers to test the veracity of the record?

Mr. **Walker**. Yes; we would continue the tracing function as it is carried out today, and that is how the tracing function is basically accomplished. A firearm is usually found in a criminal situation and is traced back through the manufacturer-dealer chain.

Senator **Abdnor**. This is the way we have been doing it all the time?

Mr. **Walker**. Yes, as a general proposition. One can determine the manufacturer and serial number and go to the manufacturer with the serial number and inquire from him as to whom he sold the firearm; and he keeps records. In this manner, the firearms can be traced through the chain of licensed dealers to the retail purchaser. However, you cannot be sure the person who used the firearm was the last person who purchased the firearm from the dealer.

Senator **Abdnor**. In your mind this is not a kind of backdoor gun registration, is it?

Mr. **Walker**. No; it is not gun registration. It is simply a requirement at the present time that the licensed dealers who transact in guns maintain their own records. There is no centralized recordkeeping function in the Federal Government and we would not intend to have one that would be in the nature of a registration. There is no registration as such.

Mr. **Powis**. Mr. Chairman, we are not really looking to test the veracity of people in business, we are looking to be able to trace weapons used in crimes and we are looking to make sure there is compliance. We don't intend to do tests just for the purpose of checking veracities.

CASE NUMBER SYSTEM

Senator **Abdnor**. On to another point. Mr. Walker, you had Secret Service Agent John Vezeris write a memo to the Acting Director of the Division in which he stated:

> The possible merger with the BATF has clarified the need to examine alternatives to the current case number system. Should the merger take place, this Service will need to administratively control approximately 65 new types of firearms and explosives related investigations. To use the current system of case numbers is not practical.

What are some of those 65 new types of firearms the Secret Service proposes to investigate?

Mr. **Walker**. I am not familiar with that.

Mr. **Simpson**. I am not familiar with the particulars, Mr. Chairman. I do know the agent, John Vezeris. He is with the Secret Service. I would have to check that and give it to you for the record, sir.

Senator **Abdnor**. I would appreciate that.

[The information follows:]

Firearms and Explosives Investigations

The Secret Service does not intend to investigae "65 new types of firearms and explosives." The Secret Service memorandum quoted by Senator Abdnor referred to an administrative case numbering system. Under the proposed merger, approximately 65 categories of firearms and explosives crimes to be investigated would be integrated into the Secret Service case numbering system. Some examples of these 65 categories of investigations are "Felon in Possession of Firearms", "Theft or Loss of Firearms or Explosives from Dealers", "Bombing Interstate Property", "International Trafficker in Arms", etc.

FIREARMS REGULATION ENFORCEMENT

Senator **Abdnor**. Mr. Walker, I get a little concerned about regulatory enforcement and law enforcement. This transfer would make it very difficult. You are talking about a regulatory situation like gun control that was passed in 1968 and transferring that over to a criminal enforcement office. Maybe our intent was wrong. Maybe we need a tougher gun control law. Is that what we need?

Mr. **Walker**. Well, I think this gets into an area of great controversy nationally, but what we are talking about here is putting this function into an agency that will concentrate solely on the criminal use of firearms and stay away from the kind of regulatory abuse that is possible in regulating what are in effect legitimate businesses. The problem as we have seen it has been one in which the regulations have become more important than the purpose behind which the law was formulated. What we need is a greater concentration on the criminal trafficker, the serious violator who is supplying handguns clearly illegally into the large urban centers where they are being distributed for use in criminal activities, such as narcotics. That is where our focus should lie. We feel that with the Secret Service performing this function we will have a better concentration on the real reason for enforcement in this area and we will be getting away from the regulatory aspects of it, more toward the criminal enforcement aspects.

TRANSFER OF LICENSING PROGRAM

Senator **Abdnor**. Mr. Walker, on January 6, 1982, Mr. G. R. Dickerson wrote a memorandum to Mr. Powis which says in part, I quote:

> I would like to take immediate action to transfer the ATF firearms and explosives licensing program from regulatory enforcement to criminal enforcement. We don't believe this action is contrary to the language in the continuing resolution prohibiting implementation of the proposed transfer of ATF functions to Secret Service and Customs.

Do you agree with that?

Mr. **Walker**. Yes.

Senator **Abdnor**. Isn't this transfer from regulatory to criminal a direct violation of the current law that prohibits a transfer of function from ATF to the Secret Service?

Mr. **Walker**. We are not transferring anything to the Secret Service with that. This is something that would be done internally.

Senator **Abdnor**. This has nothing to do with the Secret Service?

Mr. **Walker**. No transfers have taken place between ATF and the Secret Service. We are talking about an internal management decision vis-a-vis ATF.

Senator **Abdnor**. Well, they put in they took it themselves, ATF took it out of regulatory and put it in criminal in their end of it.

Mr. **Powis**. No, sir, it has not been done yet. It is a proposal. We think it is a good proposal. It has nothing to do with the reorganization. It was one of the findings of the management review.

Senator **Abdnor**. You certainly wouldn't do it until we take our questionable views on this being we have it in the continuing resolution. It says to leave everything as it is. You wouldn't propose that under the circumstance?

Mr. **Powis**. Well, sir, it is a proposal.

Senator **Abdnor**. You are not going to carry it through?

Mr. **Powis**. It is really an internal management decision.

Senator **Abdnor**. Even with what we said about it?

Mr. **Powis**. Mr. Chairman, if you have very strong feeling on that I think we certainly would weigh those feelings. But it is an internal management issue and it is not connected with any kind of a reassignment of functions.

Mr. **Walker**. Mr. Chairman, in the event that there were no reassignment of function we would want to look at that very closely to see whether that would be good policy. We think right now preliminarily it does make sense.

Senator **Abdnor**. Really, Mr. Walker, wouldn't it be a lot better if you proposed legislation and brought it up and put it in the right committees? Let's face it, why should it be this committee who should go ahead and do it. You made some real changes. Yet if we give you your way here today—I am amazed that some of the committees in the Congress really realize what is going on and aren't concerned about it.

Mr. **Walker**. We have seen, frankly, great support for this.

Senator **Abdnor**. From where?

Mr. **Walker**. The International Association of Chiefs of Police; State and local law enforcment are generally in favor.

CORRESPONDENCE SUPPORTING TRANSFER

If I could just take a minute, on February 18, 1982 I received a letter from the district attorney in Gonzales, Tex., and he wrote in in support of this. He thinks the merger would be a benefit to all of us in law enforcement.

The sheriff from Sayre, Okla., on February 18, 1982 wrote in that he would like to see the merger of ATF and Secret Service. He said they work with both of the agencies and have good relations with both.

Senator Abdnor. Do you want to submit those for the record?

Mr. Walker. Yes; I would.

[The letters follow:]

LETTER FROM HOUSTON MUNSON

25TH JUDICIAL DISTRICT
GUADALUPE, GONZALES,
LAVACA AND
COLORADO COUNTIES
P.O. BOX [illegible]
GONZALES, TEXAS 78629

February 18, 1982

Mr. John M. Walker
Assistant Secretary for Enforcement & Operators
Room 4008
Department of the Treasury
15th and Pennsylvania Ave. Northwest
Washington, DC. 20220

RE: Merger of the Bureau of Alcohol, Tobacco and Firearms with the United States Secret Service:

Dear Mr. Walker:

Please accept this letter as my office's recommendation to you in favor of the merger of the Bureau of Alcohol, Tobacco and Firearms with the United States Secret Service. Although I am more familiar with the State of Texas and its law enforcement agencies, I have, from time to time, had the opportunity to work with both entities of the Federal Law Enforcement team and it is our opinion that the merger would be of benefit to all of us in law enforcement.

Thank you very much for your consideration in this regard.

Yours very truly,

Houston Munson

Houston Munson

LETTER FROM DEAN SMITH

OFFICE OF
DEAN SMITH, SHERIFF
BECKHAM COUNTY
SAYRE, OKLAHOMA 73662

February 18th, 1982

John M. Walker
Assistant Secretary for Enforcement and Operations
Room 4008 Dept. Treasurery
15th and Pennsylvina Ave North
West Washington, D.C. 20220

Dear Sir:

I am writing concerning ATF and Secret Service, I would like to see these merged.

We work with both of them and have had good working relations with both, but believe it would benefit everyone if they were merged.

Yours truly
Dean Smith

Dean Smith, Sheriff

GEORGIA POLICE RESOLUTION

Mr. **Walker**. We have another letter from the sheriff of El Reno, Okla., favoring the merger. Similary, a letter from the chief of police of Edmond, Okla.

Senator **Abdnor**. Did you see that resolution from the Georgia police?

Mr. **Walker**. I think we mentioned that at the last hearing, and I think that our experience has been that everybody in law enforcement who we have explained this to and had a chance to brief have been supportive of this proposal. We do not know of a law enforcement agency we have explained this to thoroughly that is opposed to this, and we feel pretty confident that the Georgia police officers would feel the same way.

Senator **Abdnor**. Why do you say that with Georgia? Is that just a bum steer? Are you telling us now they didn't understand?

Mr. **Walker**. We never had any correspondence from them.

Senator **Abdnor**. We have their resolution.

IACP SUPPORT

Mr. **Walker**. The IACP initially in September of 1981 came out against this and voted that ATF should remain a separate organization. They studied the matter closely, were briefed, became thoroughly informed on the issues and recognized there was great merit from the law enforcement perspective to this merger. I think we can look at the reorganization, proposed transfer of functions here on the merits. We have our reasons which we have set forth. I haven't been convinced that another proposal would be better than this one, that the agency would do well to remain independent and stay where it is, where we have the anolomous mixture of functions that do not make sense and have caused so many problems. We think we would have a stronger, more responsive set of functions and we could conduct these functions efficiently and with at least the degree of productivity and also focusing in the right area, focusing against criminals and carrying out the statutorily mandated functions on the Customs side as well.

TRANSFER COSTS

Senator **Abdnor**. I have a question here from Senator DeConcini, who couldn't be here. He says, Mr. Walker, Government figures indicate that it will cost $20,000 to transfer and cross-train a law enforcement agent, with the Government picking up the expense on such things as real estate sales commissions, the negative difference between the sale and purchase of a new home, the movement of the personal property, travel for spouse and children and temporary quarters for the family. You envision the transfer of approximately 1,200 agents from BATF to Secret Service at a cost of $20,000 per agent. That amounts to approximately $24 million just to transfer and train BATF agents to be Secret Service agents. That does not include the cost of transferring and cross-training BATF agents being transferred to Customs.

What is your best estimate of the cost of transferring and cross-training BATF agents who would be transferred to Secret Service and Customs? Break it out into the cost of transfer and the cost of cross-training for both Secret Service and Customs.

Mr. **Walker**. Mr. Chairman, first of all, we did not anticipate physically moving all 1,200 ATF agents. Indeed, it would be a much smaller percentage, more in the nature of approximately 180 or thereabouts, and that would be over a period of time. So we have looked at this situation and we believe such moves as will be required by the transfer of functions can be done within the normal permanant change of station allowance for 1982, 1983, and 1984.

In addition to that, as far as cross-training is concerned, we have training funds that are presently in the budget that can be used to cross-train for 1982. For 1983 we are budgeting $2.7 million for that purpose. And that training would be conducted in early fiscal 1983 and would be completed within a couple of months.

Senator **Abdnor**. Most of these people remain right where they are at?

Mr. **Walker**. Exactly. It would be offices in a given town, say St. Louis, we would be closing an office and moving people in together. There would be administrative savings and equipment and lease savings, but most people would be staying where they are and working.

RIF'S

Senator **Abdnor**. Between the Secret Service and BATF how many RIF's will there be? How many will be let go? Are you going to use all the administrative people and agents?

Mr. **Walker**. There would be reductions in administrative personnel. We have already referred to some outplacing of agents, some reductions through attritions. We would expect attrition to satisfy whatever reductions need to take place in the agent area. In the agent area we do not anticipate RIF's being required.

USE OF IRS AGENTS

Senator **Abdnor**. One thing that has bothered me for a long time. You are looking for agents, qualified, trained people. We have been wondering about that. As a matter of fact, we asked IRS to give us a count. They have 2,700, more than in Secret Service. Have you ever thought about using some of those people? Have you ever thought about looking over in that area? You are obviously looking for qualified people. Those 2,700 people, I have serious doubts; we may get some answers at our hearings for 1983. I was just wondering if you are really looking for some agents, it looks to me that would be a great resource. I wonder if you have given that any thought.

Mr. **Walker**. Of course, the IRS has its own criminal investigative demands that are substantial.

Senator **Abdnor**. Have you looked at that? They haven't been looked at for a long time either. Have you made a study of that group?

Mr. **Walker**. I think for the Secret Service to swallow the IRS would be a little like Jonah swallowing the whale.

Senator **Abdnor**. Why? If you took some of their agents we might be able to help you out. I am trying to find out how many of those people they really need. That is a lot of agents.

Mr. **Walker**. The IRS, of course, is not one of the bureaus that reports to me and I can't speak for them.

Senator **Abdnor**. If we had an excess amount it would be a great resource for you. Wouldn't they be equally as good as BATF agents?

BENEFITS OF TRANSFER

Mr. **Walker**. Yes. It is not just the personnel increase that the Secret Service is seeking or would be benefiting by here, we are looking at an increase in responsibilities and a better balanced agency with a greater investigative workload and more relevant investigative workload, all of which is important here from the Secret Service perspective. It is not just increasing people.

UTILIZATION OF MANPOWER

Senator **Abdnor**. I just thought here is a chance to get greater efficiency. But I guess law enforcement is something I don't know how you train or use it but what I have seen so far in a lot of areas in Treasury, including Customs, there could be a lot more. There is a lack of manpower. If we had extra manpower we could do a lot better job. I am not being critical of the fact you are not doing a good job. There is only so much one individual can do. If you had more you could do more. As I have seen so far, law enforcement isn't something overly done by anyone.

Mr. **Walker**. This is something perhaps we could get into later.

Senator **Abdnor**. Well, this has been an interesting meeting. I might sound harsh at times, but I am trying to get to the bottom of this. This is a big move on the part of the committee and subcommittee to make this transfer. We are asking a lot of questions. I appreciate the time you spent.

SUBCOMMITTEE RECESS

With that, we will stand in recess until the call of the Chair.

[Whereupon, at 11:55 a.m., Monday, March 8, the subcommittee recessed, to reconvene at the call of the Chair.]

PROPOSED DISSOLUTION OF BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

THURSDAY, MARCH 25, 1982

U.S. Senate,
Subcommittee on Treasury, Postal Service,
and General Government,
Committee on Appropriations,
Washington, D.C.

The subcommittee met at 4:05 p.m., in room 1224, Everett McKinley Dirksen Senate Office Building, Hon. James Abdnor (chairman) presiding.

Present: Senators Abdnor, Laxalt, Mattingly, and DeConcini.

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT

Treasury Department Reorganization Plan

ALTERNATIVE RECOMMENDATIONS

Senator **Abdnor**. The Subcommittee for the Treasury, Postal Service and General Government of the Appropriations Committee will now come to order.

This subcommittee has held over 10 hours and 40 minutes of hearings on the proposed reorganization of the BATF. We have reviewed the testimony received from both administration and outside public witnesses. I have examined the Treasury Department's proposed reorganization plan and have concluded that the plan as presented to the subcommittee should not be approved. However, Senator DeConcini and I believe that certain elements of the Treasury Department's reorganization plan do have merit and, therefore, we are recommending the following as an alternative. This alternative is in harmony with the established case law.

Senator DeConcini, I am going to call on you, if you don't mind, to spell out for the subcommittee the plan we have suggested.

Senator **DeConcini**. Mr. Chairman, thank you.

Let me first say that I want to take this opportunity to publicly commend you and the staff here for the work that has been done on the handling of this most important and politically sensitive issue before the committee.

Since late last year, I know you have withstood intense lobbying from different sides. You have approached the administration's reorganization plan with an open mind, and holding hours of hearings. You and I have discussed it on several occasions. We have met with the subcommittee members. Your hearings were fair and open. They were unbiased, I thought, and conducted without precluding any interest's point of view. Perhaps most importantly, you have worked closely with the minority in crafting what I think is truly a bipartisan alternative——

Senator **Abdnor**. Thank you.

Senator **DeConcini** [continuing]. That I believe addresses the concerns of all parties, including the administration. Quite frankly, it does a lot of the things the administration had in mind.

Therefore, Mr. Chairman, we have discussed a number of alternatives to the administration's proposed reorganization plan and have agreed in principle to a plan that would transfer the arson, bombing, and explosives functions from what is now the BATF to the U.S. Secret Service and keep all firearms functions plus tobacco and alcohol activities in BATF. I will offer such an amendment, or directive, to the full committee. I would recommend as our final proposal that we shift 317 BATF agents currently serving in the arson, bombing, and criminal trafficking and explosives areas to the Secret Service, and an additional 400 BATF agents currently serving in the firearms area in BATF to Secret Service to augment the Service's protective and criminal investigative missions that they currently maintain.

Again, no firearms activities would be shifted to the Secret Service under my proposal, but 400 BATF agents would move over to Secret Service out of the current BATF firearms agent workforce. Also, I would suggest that the Secretary of the Treasury be authorized to shift an appropriate level of support and clerical staff with these agents so that the Secret Service support staffs are not overburdened by this large influx of new agents to the Service.

NAME CHANGE FOR BATF

Finally, I would recommend that the name of the Bureau of Alcohol, Tobacco, and Firearms be changed to the "Treasury Compliance Agency" or "TCA."

Mr. Chairman, I believe that this plan offers a fair compromise to the administration's proposed reorganization plan and meets the administration at least halfway if not further.

HOUSE ACTION ON ADMINISTRATION PROPOSAL

As you know, the House has essentially turned the administration's plan down flat by freezing it until June 30. While keeping firearms, alcohol, and tobacco activities in the Bureau, my plan does provide the U.S. Secret Service with two things that it badly needs—more trained agents and additional criminal investigative jurisdiction. At the same time, the plan would keep the alcohol and tobacco functions out of the U.S. Customs Service, an agency which is already overburdened with massive responsibilities in the drug interdiction and law enforcement area and which is facing sharp cuts in both its budget and work force next year.

Finally, my proposal provides for full enforcement of the Federal Alcohol Administration Act—the backbone of the alcohol industry—and approval of the administration's full $22,346,000 supplemental budget request for 1982. Without this supplemental, BATF would be faced with the prospect of RIF'ing over 1,000 agents over the next several months.

Mr. Chairman, I really believe this is a fair compromise that you and, I think, the majority of this committee can agree on. I urge its adoption.

Senator Abdnor. Thank you, Senator DeConcini.

Before we put anything to a vote, is there any discussion?

LAXALT SUBSTITUTE

Senator Laxalt. Yes, Mr. Chairman. I would like to offer a substitute.

[The substitute follows:]

AGREEMENT ON PLANS FOR REORGANIZATION OF BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

1. Treasury can proceed with reorganization plans to include the transfer of approximately 1,200 law enforcement agents with necessary support personnel, a total of approximately 1,630 people, from the Bureau of Alcohol, Tobacco, and Firearms to the United States Secret Service.

2. BATF will be abolished and in its place a new organization, known as the Treasury Compliance Agency, will be established.

3. TCA will continue to have the functions of alcohol and tobacco regulation and enforcement. It will also retain on a permanent basis the regulatory functions of the firearms laws (inspection, licensing, compliance, etc.).

4. At this time, firearms enforcement functions will not be transferred to USSS, but the type and manner of enforcement functions to be transferred will be worked out as soon as possible between the Administration and the relevant members of the Senate.

5. Specifically, the arrangements to be worked out will follow the following principles:

(1) USSS will have enforcement responsibilities for Title II offenses (machine guns, silencers, etc.) and offenses involving firearms use by felon and ex-felons.

(2) Language will be developed to specify the USSS enforcement role in offenses concerning criminal trafficking in guns (interstate offenses and selling of guns without a license offenses) so that this enforcement responsibility clearly pertains to criminal activity and does not involve technical violations or the type of matters that would involve law abiding gun owners.

6. Enforcement of explosives and arson laws would be transferred to USSS immediately.

EXPLANATION OF SUBSTITUTE

Senator Abdnor. Is there a second? I guess I second the motion or proposal of Sentator DeConcini. Now we are ready for your substitute.

Senator Laxalt. All right.

This substitute is in the form of a compromise effected between the administration and several of the interested parties to this whole problem. Essentially, it provides these points.

First, the Treasury Department can proceed with reorganization plans to include the transfer of approximately 1,200 law enforcement agents with necessary support personnel, a total of approximately 1,630 people, from the Bureau of Alcohol, Tobacco and Firearms to the U.S. Secret Service. 1,200 agents, the remaining support personnel, 430, a total of 1,630. I think we are moving from the base figure here of 2,875.

Second, BATF will be abolished and in its place a new organization, known as the Treasury Compliance Agency, will be established. I feel that this is in conformity with Senator DeConcini's suggestions as well as the chairman's.

Third, TCA will continue to have the functions of alcohol and tobacco regulation and enforcement. It will also retain on a permanent basis the regulatory functions of the firearms laws—inspection, licensing, compliance, and so forth. So far we are in agreement in connection with tobacco and alcohol, that they would remain under the new title.

FIREARMS ENFORCEMENT FUNCTIONS

Now emerges the conflict. Where are we going to have the enforcement functions of firearms? The administration recommends that the regulatory aspects remain in what is now BATF. However, all the criminal aspects go over to Secret Service. That is essentially what the administration recommends in terms of division of functions. Regulatory would be in TCA, all criminal functions would be in Secret Service.

Fourth, at this time, firearms enforcement functions will not be transferred to the Secret Service. The specifics of the enforcement functions to be transferred will be worked out as soon as possible between the administration and the relevant Members of the Senate. This obviously is in recognition of the concerns that Senator DeConcini and perhaps the chairman have in this regard.

Fifth, and more specifically, the arrangements to be worked out will follow the following principles:

A—U.S. Secret Service will have enforcement responsibilities for title II offenses—machine guns, silencers, et cetera—and offenses involving firearms use by felons and ex-felons.

B—Trafficking in firearms. Language will be developed to specify the U.S. Secret Service enforcement role in offenses concerning criminal trafficking of guns—(interstate offenses and selling of guns without a license offenses)—so that this enforcement responsibility clearly pertains to criminal activity and does not involve technical violations or the type of matters that would involve technical law-abiding gun owners.

C—Enforcement of explosives and arson laws would be transferred to Secret Service immediately.

That essentially, Mr. Chairman, is the basis of the administration's substitute, which I would like to offer for consideration by the subcommittee.

Senator Abdnor. Senator Laxalt, for the purpose, if you want, of a vote, I will be happy to give you a second.

Senator DeConcini. Mr. Chairman, I appreciate the Senator from Nevada's effort here. I just want to make one comment, briefly.

Paragraph five of the Senator's substitute, it seems to me like we ought to try to address that because of the substantial jurisdictional changes here. We have a perfect vehicle in the Judiciary Committee in the McClure-Volkmer bill that is under consideration now.

Senator Laxalt. I believe that is true.

Senator DeConcini. I would hope you and I, regardless of how this comes out, could work along that line during that markup. I would have to oppose it, reluctantly, I say to my good friend from Nevada, because I think it is leaving too little behind at BATF in the area of the enforcement provisions that are left even under the Senator from Nevada's proposal. So reluctantly I have to vote against it, Mr. Chairman. I am prepared to vote.

VOTE ON LAXALT SUBSTITUTE

Senator ABDNOR. With that, the first vote will be on the substitute offered by Senator Laxalt. If we are ready, the clerk will call the roll.

Mr. VAN KIRK. Mr. Laxalt.

Senator LAXALT. Aye.

Mr. VAN KIRK. Mr. Mattingly.

Senator ABDNOR. No by proxy.

Mr. VAN KIRK. Mr. DeConcini.

Senator DECONCINI. No.

Mr. VAN KIRK. Mr. Proxmire.

Senator DECONCINI. No by proxy.

Mr. VAN KIRK. Mr. Chairman.

Senator ABDNOR. No.

This vote is 4 to 1. The substitute is lost.

Now we revert to the passage of the original proposal as offered by Senator DeConcini. Again, if we are ready to vote, the clerk will call the roll.

Senator LAXALT. Before we do, let me see if I understand the DeConcini proposal in terms of numbers. Where are we?

Senator DECONCINI. What this would do is——

Senator LAXALT. Can we start with a base of 2,875?

Senator DECONCINI. Let's start with the base. We are going to transfer arson and explosives and 317 BATF agents. That is number one.

Senator LAXALT. All right. Arson, explosives, 317 BATF agents.

Senator DECONCINI. Right. In addition to that, we would transfer an additional 400 BATF agents presently serving in the firearms area at BATF also to the Secret Service. Then they would be authorized, in addition to that, to shift the appropriate level of support and clerical staff, whatever that amounted to.

Am I going too fast?

Senator LAXALT. You haven't got that tied at all?

Senator DECONCINI. No.

Senator LAXALT. Are you going to leave that open?

Senator DECONCINI. Yes.

Senator LAXALT. All right.

Senator DECONCINI. We leave that to the Secretary of the Treasury. And we change the name to TCA.

Senator LAXALT. What does that leave in TCA?

Senator DECONCINI. That leaves 2,800 less 717 plus support personnel that they take out.

Senator LAXALT. Do you have a ballpark on that?

Senator DECONCINI. The best I can put together, it would leave 500 law enforcement agents in the firearms enforcement area. It wouldn't touch any of the alcohol administrative enforcement regulators.

I can give you a copy of this, Paul, if you want.

Senator **Laxalt**. No, that is all right.

VOTE ON DE CONCINI PROPOSAL

Senator **Abdnor**. With that understanding, we are now ready for the vote. If so, the clerk will call the roll.

Mr. **Van Kirk**. Mr. Laxalt.

Senator **Laxalt**. No.

Mr. **Van Kirk**. Mr. Mattingly.

Senator **Abdnor**. Aye by proxy.

Mr. **Van Kirk**. Mr. DeConcini.

Senator **DeConcini**. Aye.

Mr. **Van Kirk**. Mr. Proxmire.

Senator **DeConcini**. Aye by proxy.

Mr. **Van Kirk**. Mr. Chairman.

Senator **Abdnor**. Aye.

Mr. **Van Kirk**. The vote is four to one.

Senator **Abdnor**. The vote is four to one and the proposal is adopted.

We will report by letter to the chairman of the full committee.

[The letter follows:]

Letter From Senators DeConcini and Abdnor

March 25, 1982.

Hon. Mark O. Hatfield,
Chairman, Appropriations Committee,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: We would like to take this opportunity to transmit to you the recommendation of the Senate Appropriations Subcommittee on Treasury, Postal Service, and General Government regarding the proposed reorganization of the Bureau of Alcohol, Tobacco, and Firearms (BATF) within the Treasury Department.

As you may know, the Administration has proposed a shift of 719 positions and the alcohol and tobacco regulatory functions from BATF into the U.S. Customs Service, and a shift of 1,731 positions and the firearms, arson, and explosives activities from BATF into the U.S. Secret Service. The plan would also call for reduced enforcement of the Federal Alcohol Administration Act by Treasury.

The House Appropriations Committee on Wednesday, March 24, disapproved the Administration's plan and extended the "freeze" on implementation of the plan, currently contained in P.L. 97-92, until June 30, 1982. This afternoon the Senate Subcommittee on Treasury, Postal Service, and General Government voted to approve an alternative to the Administration's reorganization plan.

The reorganization plan approved by the Subcommittee would direct the following:

1. The firearms enforcement and regulatory function would remain in the Bureau of Alcohol, Tobacco, and Firearms.

2. 717 BATF agents, including 400 agents from the current BATF firearms agent workforce, and sufficient fiscal 1983 funding to cover their salaries and expenses, would be transferred from BATF to Secret Service, and the arson, bombing, criminal trafficking and explosives functions would be shifted intact from BATF to the U.S. Secret Service. Implementation of this transfer would commence in fiscal year 1982, using the supplemental appropriation to initiate this change.

3. The alcohol and tobacco functions would remain in the Bureau of Alcohol, Tobacco, and Firearms with full funding and full enforcement of the Federal Alcohol Administration Act. The Subcommittee recommends the appropriation of $7.5 million for the balance of fiscal year 1982 and $15 million in fiscal year 1983 to fully fund the FAA Act activities in BATF.

4. The Secretary of the Treasury would conduct a major management study to bolster top management of the BATF and crack down on the identified causes of past and present abuses by agents in the field in the firearms area. The report

would be made to the Committee on Appropriations by no later than September 30, 1982.

5. The full requested supplemental appropriation of $22,346,000 for fiscal 1982 would be approved either in the Urgent Supplemental Appropriation Bill (H.R. 5922) or the Continuing Resolution (H.J. Res. 409), both currently pending in the House. This supplemental would be required to prevent wholesale reductions in force in the agent workforce at BATF and would help to initiate the Committee's proposed reorganization plan.

6. The Secretary of the Treasury would be directed to submit legislation to the Congress to shift bank robbery jurisdiction from the FBI to the Secret Service.

7. The name of the Bureau of Alcohol, Tobacco, and Firearms would be changed to the Treasury Compliance Agency.

We believe that this reorganization plan is in the best interests of the Department of the Treasury and the public and we urge its adoption by the full Senate Committee on Appropriations prior to the March 30 deadline imposed by Public Law 97-92, the Continuing Resolution.

With best wishes.

Sincerely,

DENNIS DECONCINI,
Ranking Minority Member.

JAMES ABDNOR,
Chairman, Subcommittee on Treasury,
Postal Service, and General Government.

RECOMMENDATION

Senator **LAXALT**. It is my understanding that this comes in the form of a recommendation only?

Senator **DECONCINI**. That is right.

Senator **LAXALT**. And as far as the resolution of this matter, that is left to the complete and full discretion of the full committee?

Senator **ABDNOR**. That is correctly stated.

CONCLUSION OF HEARINGS

If there is no other business to come before the subcommittee, the subcommittee stands in recess.

[Whereupon, at 4:20 p.m., Thursday, March 25, the hearings were concluded and the subcommittee was recessed, to reconvene at the call of the Chair.]

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